This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

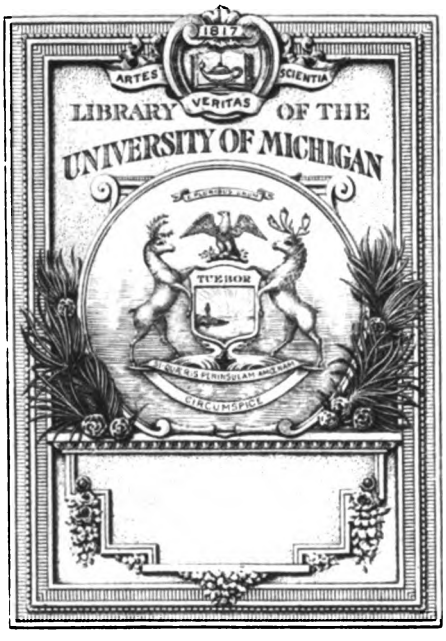
+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

B 3 9015 00228 201 3
University of Michigan – BUHR

Digitized by Google



Digitized by Google

B
1574
.B31
1838

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

THE

WORKS

OF

JEREMY BENTHAM,

NOW FIRST COLLECTED;

UNDER THE SUPERINTENDENCE OF HIS EXECUTOR,

JOHN BOWRING.

Directions for binding, with
Introduction (to be bound in v.1)
new title-pages and tables of
contents, are bound in v.11, pt.2.

IRS.
DE.
I.

EDINBURGH:
WILLIAM TAIT, 107, PRINCE
SIMPKIN, MARSHALL & CO., LONDON; JOHN C.
MDCCCXLI.

Digitized by Google

Digitized by Google

THE

WORKS

OF

JEREMY BENTHAM,

NOW FIRST COLLECTED;

UNDER THE SUPERINTENDENCE OF HIS EXECUTOR,

JOHN BOWRING.

PART XVI.

CONTAINING

LANGUAGE.
UNIVERSAL GRAMMAR.
TRACTS ON POOR LAW.
THREE TRACTS ON SPANISH AND PORTUGUESE AFFAIRS.
LETTERS TO COUNT TORENO, ON THE SPANISH CODE.
REFORMATION PROJECTS IN RELATION TO TRIPOLI.

EDINBURGH:
WILLIAM TAIT, 107, PRINCE'S STREET;
SIMPKIN, MARSHALL & CO., LONDON; JOHN CUMMING, DUBLIN.
MDCCCXLI.

Digitized by Google

PART XVII.

To be Published on 1st November,

WILL CONTAIN

THE CONSTITUTIONAL CODE,

EDITED FROM BENTHAM'S UNPUBLISHED MSS., BY RICHARD DOANE, ESQ.

PART XVIII.

CONTAINING

THE REST OF THE CONSTITUTIONAL CODE,

WILL BE PUBLISHED ON 1ST JANUARY.

EDINBURGH:
Printed by WILLIAM TAIT, Prince's Street.

Digitized by Google

In the Course of Publication, in large 8vo, price 9s. each Part,

THE WORKS OF JEREMY BENTHAM,

UNDER THE SUPERINTENDENCE OF HIS EXECUTOR, JOHN BOWRING.

PARTS XVII. and XVIII., to be published early in Winter, will contain—THE CONSTITUTIONAL CODE; of which only a small portion was formerly published.

THE CONSTITUTIONAL CODE will be immediately followed by MEMOIRS of JEREMY BENTHAM, by JOHN BOWRING; including AUTOBIOGRAPHICAL CONVERSATIONS recorded at the time; and a Selection from BENTHAM'S Voluminous Correspondence with the Chief Men of his Age; and

A Copious INDEX of MATTERS to the whole Works, including the Autobiography and Correspondence.

This Edition of BENTHAM'S WORKS includes a Reprint (in some cases, with Additions from the MSS. left by BENTHAM) of such of his Works as have already been printed in the English Language; a Translation (also with occasional Additions from the MSS.) of those Works of BENTHAM which have been edited and published, in the French Language, by M. DUMONT; and Selections from BENTHAM'S Unpublished Writings, edited, from his original MSS., by Gentlemen who are known to have been honoured with his confidence and regard.

SIXTEEN PARTS have been already published; containing—

1. The Principles of Morals and Legislation.
2. On the promulgation of Laws; with Specimen of a Penal Code.
3. On the Influence of Time and Place in Matters of Legislation.
4. A Table of the Springs of Action.
5. A Fragment on Government; or a Comment on the Commentaries; (Blackstone's;) with the Historical Preface to the Second Edition.
6. Principles of the Civil Code; with Appendix on the Levelling System.
7. Principles of Penal Law; comprising—1. Political Remedies of the Evil of Offences.—2. Rationale of Punishment; with Appendix on Death Punishments.—3. Indirect Methods of Preventing Crimes.
8. View of the Hard Labour Bill.
9. Panopticon; or the Inspection House—(applicable to Prisons, Workhouses, Madhouses, Hospitals, Schools, &c.)
10. Postscript to Panopticon, Parts I. and II.
11. Panopticon *versus* New South Wales.
12. A Plea for the Constitution—(against the Penal Colony of New South Wales, &c.)
13. Draught of a Code for a Judicial Establishment in France.
14. Draught for the Organization of Judicial Establishments.
15. Emancipate your Colonies; showing the Uselessness and Mischievousness of Distant Dependencies.
16. On Houses of Peers and Senates.
17. Papers relative to Codification and Public Instruction.
18. Codification Proposal; or Idea of an All-Comprehensive Body of Law.
19. Scotch Reform—(Administration of Justice in Scotland.)
20. Summary View of the Plan of a Judicatory, under the name of the Court of Lords' Delegates.
21. The Art of Packing—(Special Juries in Libel Cases.)
22. Swear not All.
23. Truth *versus* Ashurst; or Law as it Is, and as it is said to Be.
24. The King *against* Edmonds, &c.
25. The King *against* Wolseley, &c.
26. Official Aptitude Maximized; Expense Minimized; including Defence of Economy against Burke; Defence of Economy against Rose.—Observations on Mr. Secretary Peel's Speech (on Police Magistrates' Salary-raising Bill, Judges' Salary-raising Bill, and County Courts' Bill.—Indications respecting Lord Eldon.—On Public Account-keeping.
27. Commentary on Humphrey's Real Property Code.
28. Outline of a Plan of a General Register of Real Property.
29. Justice and Codification Petitions.
30. Lord Brougham displayed.
31. Principles of Judicial Procedure; with the Outline of a Procedure Code.
32. The Rationale of Reward.
33. Leading Principles of a Constitutional Code for any State.
34. On the Liberty of the Press and Public Discussion.
35. An Essay on Political Tactics; or Inquiries concerning the Discipline and Mode of Proceeding proper to be observed in Political Assemblies.
36. The Book of Fallacies.

Digitized by Google

37. Anarchical Fallacies; being an Examination of the Declaration of rights issued during the French Revolution.
38. Principles of International Law.
39. Junctiana Proposal; Proposals for the Junction of the Atlantic and Pacific Oceans, by means of a Joint-Stock Company.
40. A Protest against Law Taxes.
41. Supply without Burden.
42. Tax with Monopoly.
43. Defence of Usury.
44. Manual of Political Economy.
45. A Plan for the conversion of Stock into Note Annuities.
46. On the restrictive and Prohibitory Commercial System.
47. View of a Complete Code of Laws.
48. Panomial Fragments.
49. Nomography; or the art of Inditing Laws.
50. Logical Arrangements.
51. Equity Despatch Court Proposal.
52. Equity Despatch Court Bill.
53. Plan of Parliamentary Reform, in the form of a Catechism.
54. Radical Reform Bill, with Extracts from the Reasons.
55. Radicalism not dangerous.
56. An Introductory View of the Rationale of Evidence, for the use of Non-Lawyers as well as Lawyers.
57. Rationale of Judicial Evidence; with Notes, chiefly illustrative of Alterations in the Law, which have taken place since the publication of the First Edition; and a full Index of Matters to Bentham's two Works on Evidence.
58. Chrestomathia.
59. Ontology.
60. Logic.
61. Language.
62. Universal Grammar.
63. Tracts on Poor-Law.
64. Three Tracts on Spanish and Portuguese Affairs.
65. Letters to Count Toreno, on the Spanish Code.
66. Reformation Projects in relation to Tripoli.

A PORTRAIT of BENTHAM, beautifully Engraved by FOX, after Pickersgill, and a General Preface to the Works, are given with Part I.

"To the admirers of Bentham—and we believe they are numerous—this Edition of his Works comes recommended by *completeness, elegance, and cheapness*."—*Caledonian Mercury.*

The Rev. Robert Hall's Appreciation of Bentham's Writings.

"'It is just like reading a novel'" was his usual expression of commendation with regard to such works, of a dry abstract nature, as discovered subtlety, depth, or vigour of thought. In this class he placed the works of Jeremy Bentham, for whom he entertained the highest estimation, as an original, profound, and accurate thinker; observing often that, in the particular province of his speculations—the science of legislation—he had advanced to the limits of reason; and that, if *he* were compelled to legislate for the world upon uninspired principles, 'he should take Bentham, and go from state to state with as firm a step as though he walked upon a pavement of adamant.'"

The London and Westminster Review, on Bentham.

"After every abatement, their remains to Bentham an indisputable place among the great benefactors of mankind. His writings will long form an indispensable part of the education of the highest order of practical thinkers; and the present collection of them ought to be in the hands of every one who would either understand his age or take any beneficial part in the great business of it. Nearly all his earlier, and many parts of his later writings, are models, as we have already observed, of light, playful, and popular style. A Benthamiana might be made of passages worthy of Addison or Goldsmith."

Lord Brougham's estimate of Bentham.

"The age of Law Reform and the age of Jeremy Bentham are one and the same. He is the father of the most important of all the branches of Reform, the leading and ruling department of human improvement. He it was who first made the mighty step of trying the whole provision of our jurisprudence by the test of expediency, fearlessly examining how far each part was connected with the rest; and, with a yet more undaunted courage, inquiring how far even its most consistent and symmetrical arrangement were framed according to the principle which should pervade a code of laws—their adaptation to the circumstances of society, to the wants of men, and to the promotion of human happiness. In thus assigning to Mr. Bentham, not merely the first place among legal philosophers, but the glory of having founded the sect, and being the first who deserved the name, it cannot be intended to deny that other writers preceded him who wisely and fearlessly exposed the defects of existing systems; but none before Mr. Bentham took in the whole department of Legislation. None before him can be said to have treated it as a science, and, by so treating, made it one. This is his pre-eminent distinction; to this praise he is most justly entitled; and it as proud a title to fame as any philosopher ever possessed. To the performance of the magnificent task which he had set before him, this great man brought a capacity, of which it is saying everything to affirm that it was not inadequate to so mighty a labour."

WILLIAM TAIT, Edinburgh; SIMPKIN, MARSHALL, & Co., London; and JOHN CUMMING, Dublin.

Digitized by Google

Obscurity, so long as it lasts, may be considered as the superlative or highest point of ambiguity; ambiguity having place to the widest extent. It is not, as in the case of ambiguity in its stricter sense, between two, or some other small number of imports, and these determinate ones, that the mind hesitates, but between *all*, or rather *among* all, imaginable ones.

The greater the number is of the words that are employed in the expression of a given import, the *less clear* is the discourse which they compose. Take an entire paragraph, take any one of the sentences of which it is composed,—to whatsoever purpose the mass of discourse in question is considered as a *whole*, till the last word has been heard or read, and understood, obscurity, of a shade more or less deep, covers every part of it. Such being the case, the sooner the mind has gone over the whole, the sooner this obscurity is dispelled, and the less there is of it, the sooner it is gone through with.

Section III.

Of Conciseness.

The conciseness of an expression is inversely as the number of words employed in the conveyance of the idea intended to be conveyed by it.

The uses of this property are,—

I. When the signs employed are of the impermanent kind, such as words spoken,—saving in the article of time, of time employed in utterance and reception,—in speaking and hearing.

II. When they are of the permanent kind, 1, saving in the article of time employed in reading; 2, saving in the expense of giving birth and preservation to these same permanent signs; in the expense of the substraction and colouring matter for writing, printing, and engraving, or the like.

III. To a certain degree *conciseness*, as above expressed, is contributory to clearness; that is to say, the want of it is contributory to the absence of, or is opposite to, clearness,—is contributory, at any rate, to obscurity, and it may be to ambiguity.

IV. Conciseness is, in many instances, contributory to impressiveness.

V. To apprehensibility.

VI. To retainableness,—thus Horace,

> Quicquid præcipies, esto brevis: ut citò dicta
> Percipiant animi dociles, teneántque fideles.
> *De Arte Poet.*, 335-336.

Two branches of art and science, or say, two subject matters of knowledge there are, in its application to which, the usefulness and importance of conciseness is prodigious. These are, 1, Law; 2, *Posology* or (to employ the word which, unexpressive as it is, is the only one as yet in use) mathematics;—yet prodigious as is this importance, scarcely has it been taken for the subject of observation; and indeed as applied to *posology*, namely to the arithmetical branch of it, it seems to have hitherto altogether escaped notice.

Of the wonders performed by the means of algebra, abbreviation has been one main, not to say the principal, instrument. Abbreviation productive of conciseness,—the act of giving, in a degree more or less considerable, to the discourse in question, the property of conciseness.

That compressedness is of use not only immediately, and on its own account, but mediately and in the character of an instrument of clearness, has been already intimated;—in what way it is so, may now have been observed.

Section IV.

Facility of Utterance, or say Pronunciability.

Though in the field of causality intimately connected with melodiousness, this quality is in its nature, and thence in idea, sufficiently distinguishable from it. In proportion as, to produce it requires effort on the part of the speaker, and on that occasion effort is accordingly employed, the fact of its being employed naturally becomes perceptible, and the existence of it is actually perceived; and in proportion as in the bosom of the speaker uneasiness is, or by the hearer is supposed to have place, by the force of sympathy, the like effect is, in his own bosom, apt to take place.

That in the formation of language in general, melodiousness and facility of utterance, taken together, have actually, in the character of ends, been generally aimed at, is a matter of fact that may be stated as perceptible in the history of some languages, and it is supposed in a degree more or less considerable in the history of every language.

In every known language, in so far as it is known, changes in structure are observable; and in every instance these changes appear to have had for their cause, a general endeavour towards the giving to the instrument of discourse these agreeable qualities in a continually increasing degree.

Section V.

Of Melodiousness, or say Harmoniousness.

By each of these terms is meant the property of producing, through the medium of the ear, a sensation of an agreeable cast in the mind.

Applied to different species of discourse, *i. e.* to discourse considered as employed for different purposes, melodiousness or harmoniousness,* whichsoever be the term, presents two

* In the word *harmoniousness* may be seen a source of ambiguity, from which the word *melodiousness* is free; applied to the aggregates of musical sounds, harmony has, in contradistinction to melody, been in these modern times applied to the case in which sounds more than one are purposely

Digitized by Google

ideas somewhat different, though differing rather in degree than in any other particular. In this point of view the opposite ends of the scale may be designated by the terms *positive* and *negative*. A sort of medium being assumed —any point being taken at pleasure, as and for the middle point,—*positive* melodiousness has place when the degree of that quality is considered as being *above* that middle point, *negative* melodiousness, when the situation of the degree in question is considered as being *below* that point.

In the discourse in question, what degree of this quality is required depends upon the nature of the discourse, *i. e.* upon the purpose and the occasion on which the discourse is employed.

1. In the case of poetry, in so far as *rhythm*, *i. e.* the succession of measured sounds, is considered as entering into the composition of it, melodiousness, on the positive side of the scale, is universally understood as essential and indispensable; in the case of the art and labour of the composer, one great object is the securing the undiscontinued existence of it.

2. In the case of that sort of poetry in which rhythm is not employed, and of which the agreeableness is understood to depend on the intercourse between the imagination of the author and the imagination of the reader, melodiousness, in the positive degree, is not of the essence of the discourse; but the quantum of the pleasure produced cannot but be more or less dependent on the degree in which this quality has been conferred on it; and, at any rate, by any positive degree of the opposite quality—unmelodiousness or unharmoniousness—the design cannot but be proportionally counteracted.

3. In the case of *public speaking*—of a *speech* delivered to or before a *public assembly*—though the melody or harmony is of a different cast from what it is of, in the case of vocal music, or even that of poetry, metrical or unmetrical; and though positive harmoniousness enter not here, as there, into the very essence of the purpose, yet to that purpose, as universally acknowledged, of this quality, in so far as obtainable, an extraordinary share, is, in proportion to the degree of it, conducive; and, at any rate, by any such deficiency as leaves the degree below the middle point, the purpose cannot but be, in a proportionate degree, counteracted.

4. In a word, there is not perhaps that imaginable occasion on which, by the degree of harmoniousness or unharmoniousness appertaining to the discourse, its efficiency, with relation to the design of it, be that design what it may, may not in some degree be influenced.

This connexion, viz. between the efficiency of a discourse and the harmoniousness of it, when indicated, howsoever clear and indisputable, is in no small degree apt to be unobserved.

Speaking of the admiration universally bestowed upon Shakspeare, it is to the harmony of his numbers as much as, if not more than, to any other feature of excellence in the works of that author, that Mrs Montague attributes the effect.* When this observation first made its appearance, the character of originality was, it is believed, very generally attributed to it; at any rate, the quality in question presented itself to the author of these pages in that same character, and the observation as one which, though, when once presented, the justice of it was felt, had not till then presented itself to his mind.

produced *simultaneously*; and this for the express purpose of distinguishing the case from that of melody, in which the like sounds are not considered otherwise than exhibiting themselves in succession.

On the other hand, the word melodiousness, if employed on the occasion here in question, viz. *sounds* considered as the vehicles of *thought* and as the instruments of *converse*, seems exposed to an objection from which the word harmoniousness when applied to the same subject is free; by the word melody, the case where the sounds employed are standing with reference to each other in the relation that belongs to the sounds called *musical*, is brought to view; a sort of relation, in which, except with reference to each other in the particular case of their being, as the phrase is, *set to* music, the sounds employed as instruments of discourse do not stand to each other.

Moreover, in this case, in further justification of the use of the word *harmony*, an observation that may be made, is, that in its original acceptation ἁρμονία, the Greek word, of which the English word harmony is a copy, means neither more nor less than *adaptation*, and whether on the occasion of the pleasure derived from a number of sounds, the pleasure derived from simultaneity be or be not added to the pleasure produced by succession, *adaptation* has equal place,—it is upon *adaptation* that the production of the agreeable effect depends.

Section VI.

Of Ornability or Decorability.

Whatsoever be the import intended to be conveyed, by the mere conveyance of that import alone, nothing which can with propriety be termed *ornament*, (unless it be in so far as harmoniousness, and those other intrinsic qualities are considered in that light,) can be given to the discourse by which that import is endeavoured to be conveyed.

Saving the above exceptions, whatsoever therefore of ornament can be given to a discourse, will be given by the conveyance of some ideas which *are not* essential to the main or direct purpose, in addition to those which *are* essential to it. Of some ideas, not essential to the main purpose, will *the matter of ornament* be composed.

Of that matter of ornament, the exhibition and conveyance may be performed either by

* Essay on Shakspeare.

Digitized by Google

and with, or even without, addition to the number of the words which, if nothing in the way of ornament were conveyed, or intended to be conveyed, would have been employed.

In what manner matter of ornament, as expressed by additional words designed for that purpose, may be added to discourse, is a topic that belongs not to the design of this work. According to the general nature of the end proposed by the discourse, it belongs to the head of Rhetoric or Poetry.

The case which alone belongs in any way to the present design, is that in which, in and for the conveyance of the ornament, no greater number of words is employed than would or might have been employed, had no such design been entertained, nor any such effect been produced.

Under the present head, one very general observation may have its use.

This is,—that so long as no addition is made to the number of the words that would otherwise have been employed, the addition of any ideas, the effect of which is not in some particular and assignable way of a positively displeasing nature, the effect of which is not to produce uneasiness in some positive and assignable shape, will operate as ornament, and have the effect of producing, *i. e.* at any rate a tendency to produce, pleasure.

Of this pleasure the cause has been already brought to view. Among the qualities desirable in language, that of compressedness has in its place been brought to view. Communication of ideas being the benefit which it is the nature and design of discourse to confer, and the time and labour employed (on the one hand in the *utterance*, on the other hand in the *hearing* or reading, and, in both cases, in the *considering* the discourse) not being increased, the consequence is, that the price remaining the same, whatsoever ideas can, without any addition to that price, be imparted and received, are, with relation to the mind of the receiver, so much clear gain.

The mind is thus led to the subject of *association*—of the associations that have place among ideas.

1. What are the sorts of ideas which, in the character of main or principal ideas, are wont to have others associated with them in the character of accessory ones?

2. What are the ideas which, in the character of accessory ones, are respectively wont to be associated with these principal ones?

3. In what cases association is wont to be productive of an immediately pleasant or otherwise beneficial effect.

4. In what cases, if any, of a pernicious effect?

5. By what means any unpleasant, or in any other way pernicious effect, produced or producible by such association, may be put an end to or prevented?

Section VII.

Of Impressiveness or Force.

By the word *impressiveness* is meant to be brought to view the degree in which, so far as depends upon the general structure of it,—and not upon any particular talent of the individual by whom, on the occasion in question, it happens to be employed, nor yet upon the particular *purpose* for which, on that occasion, it is employed,—the nature of the language in question affords, on the occasion in question, be it what it may, and, with relation to the purpose in question, be it what it may, the means and probability of accomplishing that purpose.

In the nature of the purpose may be seen a circumstance, on which the form in which this quality presents itself cannot but be more or less dependent.

The *time* at which the purpose is designed to be accomplished, what is it with reference to the time at which the discourse is uttered? Is it present or future? If *future*, more or less *near* or *remote*? The faculty proposed to be operated upon, what is it?—the *intellectual* alone, or the *volitional* also? And if the *volitional*, by what *means*?—by the affections in a temperate state, or by the affections operating in a warm or in an inflamed state? In a word, by the *passions*? On the modifications brought to view by these questions, will depend, in some measure, not only the degree, but the mode, of the sort of impressiveness best adapted to the nature of the purpose.

In so far as time *future*, is the time at which the purpose is to be accomplished, and the portion in question of that time is remote, the memory is the subject on which the impression requires to be made; and thus far, as applied to a portion of discourse, *impressiveness* coincides with fitness for being held in remembrance.

If it be on the passions that the impression is proposed to be made, the *present* will be the portion of *time*, more particularly looked to for making it.

Be the purpose what it may, of which of these sorts it may, how it is that the strength, and thence the depth of the impression is influenced by the structure of the language, is an inquiry that will call for consideration as we advance.*

At present, all that seems suited to this place is,—that in most cases impressiveness depends upon, or is promoted by, *clearness*, in so far as *clearness* stands opposed to ambiguity, and likewise, in all cases, by compressedness.

Section VIII.

Of Dignity.

By dignity, is here to be understood, that

* See chap. v. sect. viii.

Digitized by Google

quality or character in a man's style, which is the result of its being such as to convey to the hearer or reader the idea of self-possession on the part of the speaker or writer; the idea of his having acquired a mastery over the subject which he has taken in hand, whatsoever it be, or at the least, of his having settled and arranged his thoughts concerning it.

This quality may be termed a secondary one, as being a quality, which is, as it were, a collateral result, produced without any separate and additional causes, by virtue of some of those which are requisite for securing to the style the qualities of clearness and impressiveness.

Of strength of mind on the part of the speaker or writer, dignity of style is a natural consequence, and by that means a sign.

The signs of strength of mind are exhibited in a man's style in greater or less perfection, in proportion as it is clear of certain marks, which may be considered as symptoms of weakness.

Under one or other of two denominations, viz. 1. laxity; and, 2. fumbling; the principal symptoms of weakness may, it is believed, be found comprehended.

1. *Laxity.*—In what improprieties in the choice and arrangement of words ambiguity and obscurity take their rise, have been shown in the several preceding sections. But, as it is with the several other imperfections, which stand opposed to the several qualities desirable in language, so is it with these,—no man, who, with equal facility, could exclude them from his discourse, would leave the marks of them to appear in it and deface it. In proportion, therefore, to the degree in which it is seen to be defaced by these imperfections, is the degree of weakness under which his mind is seen to labour.

In the constitution of the mind, *ambiguity* and *obscurity* of style are symptoms of *laxity* and *weakness; clearness* and *impressiveness* are signs of *strength.*

2. *Fumbling.*—This is the natural result, and by that means a symptom of *want of preparation.*

When the field which a man has to travel over is new to him, he finds himself under the necessity of picking up as he goes the *opinions* which he sees reason to deliver, and the *expressions* which, in the delivering of them, he employs. The consequence is, that no sooner has he pitched upon one opinion, and clothed it in such expressions as at the moment have presented themselves, than he finds that, in some way or other, they are deficient in respect of correctness or completeness. Hence come clause after clause, having for their objects the producing the effects of *ampliation, restriction,* or *modification,* or, in one word, amendment.

Besides, and *again,* and *this too,* and *moreover,* it is by words of this sort that the symptom of weakness, here called *fumbling,* is betrayed.

In some cases, the seat of this disease may be found in *single terms;* in other cases, the whole proposition, or the whole paragraph, or in a word the whole argument, must be examined before the nature of the disease becomes apparent, and thence before the proper mode of cure can be ascertained.

Instances of fumbling, as perceptible in the character of single terms, are,—species of things picked up on the spot, and brought to view, one after another, in the order in which they have happened to present themselves. If a correct and comprehensive view of the subject had been taken, some generic term, in the import of which, the import of all these several specific terms, or at least of such of them as belonged properly to the occasion, would have been included, would have been employed. By this means, a number of repetitions, equal to the whole number of these specific terms, *minus* one, would have been spared; and if, for greater clearness, it had been deemed advisable to present separately to view the idea designated by these specific terms, or any of them, for producing that effect, so many single words, with the requisite small assortment of connectives for stringing them together, might have sufficed; and instead of being weakened by correction after correction, the first impression would, by so many exemplifications, illustrations, and corroborations, have been rendered stronger and stronger.

Proportioned to the difficulty of adequate preparation, is the degree in which want of preparation is apt to be unavoidable, and thence where it betrays itself, the degree in which it appears excusable. And conversely. —Proportioned to the facility of adequate preparation, is the degree in which evident want of preparation as evidenced by its symptoms, viz. *laxity* and *fumbling* is apt to render itself offensive and discreditable.

In every spoken discourse, in general, want of adequate preparation, is much more apt to be unavoidable than in any written discourse. In a spoken discourse, *laxity* and *fumbling* are accordingly more excusable and less offensive than in a written discourse.

Section IX.

Mutual Relation of the Properties Desirable and Undesirable in Language.

I. Clearness, conciseness, and correctness; with their opposites, obscurity, ambiguity, &c., —their relation.

While obscurity lasts, the signs employed call up no idea signified.

While indistinctness lasts, the sign presents, along with the idea intended to be presented and conveyed, another idea, between which two the boundaries are not defined and ascertained.

While ambiguity lasts, the sign presents,

Digitized by Google

along with the idea intended to be presented and conveyed, another idea which is not intended to be presented and conveyed, but between which and the idea intended to be conveyed, the boundaries are sufficiently definite and ascertained.

When incorrectness has place, instead of the idea intended to be presented and conveyed, is presented and conveyed an idea which was not intended to be presented and conveyed.

When, and in so far as non-completeness has place, either an idea or ideas which were designed to have place, or an idea or ideas in regard to which it is desirable that they should take place fail to take place.

Thus it is that comprehensiveness has two senses—a negative and a positive sense, according as the standard of reference is an idea which already has place in the mind of some person or persons, or an idea which, till the discourse in question was uttered, or at least framed, never yet had place; in the first case, the imperfection has place,* and non-comprehensiveness is the name; in the other case perfection has place, and comprehensiveness is the name of that perfection.

In so far as non-conciseness, or say non-compressedness, or say verbosity, has place, utterance is given to signs other than those by which the idea intended to be conveyed might have been expressed, though perhaps in a manner not quite so free from obscurity, ambiguity, and indistinctness, or say indeterminateness.

Compactness supposes ideas more than one: perhaps propositions more than one: opposite to compactness is non-compactness, or say perhaps desultoriness.

In so far as desultoriness, or say non-compactness has place, the propositions or portions of discourse, instead of being placed in contiguity, are placed at a distance, more or less great, from one another, other ideas, one or more, being placed between them.

Between the two desirable qualities of clearness and conciseness there is a perpetual repugnancy, a perpetual competition,—taking each of them at its maximum, even an absolute incompatibility.

Between clearness and conciseness, considered with reference to the same sentence, there exists the same sort of incompatibility as between conciseness considered as a quality of each particular sentence, and conciseness considered as a quality of the whole discourse of which that and the other sentences are component members.

II. Copiousness, Conciseness, Tractibility—their relation.

Of language, the use, and the sole use, being the communication of ideas, in proportion to its copiousness will be the usefulness, and in so far the excellence of every language.

But be the particular language what it will, at no one point of time will it contain within itself a stock of words, such as, without prejudice to the perfection of all these other desirable properties, shall be capable of giving expression to all the ideas for the expression of which a demand is capable of having place at a succeeding point of time. Hence in the property of copiousness, if considered as a constantly existing property or quality, the idea of tractibility is necessarily included.

Opposite to copiousness is poverty or scantiness. Scantiness may be distinguished into *absolute* and *relative*. Absolute is that which has place in so far as for the proposition for which a man has occasion to find expression, no expression can be found by any means; relative, where such expression may indeed be found, but not without prejudice to conciseness, to wit, by the employing, instead of a single-worded term, in the form of a noun-substantive, either a definition or a description, more or less loose and diffuse.

In so far as in language, copiousness is a perfection, scantiness cannot but be an imperfection.

Copiousness may be distinguished into useful or serviceable, and useless or unserviceable.

In respect of any given words, copiousness is *serviceable*, in so far as to the idea or proposition in question, without the employing of that word, expression either cannot be given at all, or not without preponderant prejudice to this or that other one of the properties desirable in language; unserviceable in so far as without preponderant prejudice to this or that property desirable in language, expression may be given to the idea or proposition in question without the employing of that word.

Scantiness and useless copiousness, *i. e.* redundancy, are properties very capable of coexisting in conjunction with one another in the same language.

In the vocabularies of the several arts, liberal and manual, in addition to such as are serviceable, others which, according to the explanation above given to the word, may, with strict propriety, be termed unserviceable, will, in almost every instance, to an amount more or less considerable, be found.

III. Copiousness and simplicity, their relation.

1. As to *copiousness*. This is a quality of a positive aspect, and presents itself as the principal one. The main use and purpose of language is to express *thought*, by the amount of all useful thought for which it is incapable of affording an adequate expression, therefore, any language cannot but be imperfect and inadequate.

This observation will be apt to appear so extremely obvious, that all mention of it may seem superfluous. A prejudice, however, is to be found established, and that in no small force, the harbouring of which is irreconcile-

* Viz., If the discourse do not embrace the idea which is made the standard of reference?—*Ed.*

Digitized by Google

able with the acknowledgement of this quality in the character of a desirable one. The word in and by which this prejudice is wont to find utterance is *purity*.

2. Simplicity. In this quality may be seen, as it were, the antagonist of *copiousness*; a language is *copious*, in so far as it is provided, furnished, replete, with useful matter: it is *simple*, in so far as it is unencumbered with matter which, being *useless*, is at best superfluous.

To this purpose, the words of which language is composed may be considered, 1. *Singly* but entire; 2. *Aggregately* as put together in the composition of a sentence: 3. *Fractionally*, i. e. each of them in respect of its component parts. By useless combinations, by words altogether useless; or, lastly, by useless modifications of words, may the simplicity of a language be destroyed.*

But allowing to the quality opposite to the one here in question the character of an imperfection, in what way, it may be asked, is it attended with any practical inconvenience, in a word, with positive uneasiness, or with loss of positive enjoyment?

I answer in this way—Whether it be his own native language, or a language which, with reference to him, is a foreign one, of no part of any language can the use be obtained by a man without labour; and in so far as it is consumed either in the learning or the employing of words or phrases that are without use, in so far is a man's labour devoid of use.†

* In the MS. there is here the following N. B.—Add examples.—1. Terms without use, in many instances technical professional terms,—diversity of names for the same kind of act. 2. Superfluous inflections; example in Greek names and verbs. Cases, moods, and tenses, expressed by different terminations in different dialects. The dual a useless number. 3. Quere as to useless combinations of words.

† The less inflected languages have the advantage over the more inflected languages, not only in simplicity but in force.*

In the English, by the separate auxiliary words by which the modifications included in the aggregate of connected words, called by grammarians the *verb*, are expressed, are, with great advantage, performed those functions, in the performance of which, terminations in prodigious number and variety are employed in the more inflected languages, viz. the Greek and Latin, and their modern derivatives.

By means of these same instruments a much higher degree of force or *impressiveness* is possessed by this same modern and northernly derived language.

Witness the words *shall* and *will*; and the most imperiously *imperative* mood expressible by the word *shall*.

Indeed, such is the quantity of verbal matter saved by the employing the word *shall* in its imperative sense, that besides giving to the English, *pro tanto*, a degree of simplicity and force not possessed by any of those southernly derived languages, dead or living, it may almost be said to give to it a degree of copiousness equally peculiar. Why? Because in the expressing by means of the necessary circumlocution the import of the imperative *shall*, so many words would be necessary that the mind has not patience to draw them out, and so they remain unexhibited.

* The same modifications which, in the least inflected languages are mostly expressed by separate words termed *auxiliaries*, are in the most inflected languages expressed by inseparable affixes, viz. prefixes or suffixes; mostly by suffixes, more commonly styled terminations.

Section X.

Comparative Importance of these several Desirable Qualities.

Such as above, is that which, in the character of a complete, as well as correct one, has presented itself as a list of the several qualities desirable in language.

Good,—it may be said,—desirable; but in what degree, as compared with one another? All in equal degree, or in different degrees?

Answer,—different and widely distant in the scale of importance will these several qualities, it is believed, upon comparison with each other, be found.

Copiousness and *clearness*, viz. clearness from ambiguity and obscurity,—compared with all the several others, these two qualities present themselves as seated upon a lofty eminence.

1. On the highest point stands *copiousness*. It is only in proportion as it is *copious* that a language contributes anything to its *end*:—to any of the modifications of which the *universal end*, *wellbeing*, is susceptible. Reduce its copiousness, and in proportion as you reduce it, the height of the place occupied by man, in the scale of being, is reduced from that of a member of the best governed and mannered community, down to that of a barbarian, of a savage, of a beast.

2. Next in the order of importance, and at no great distance, comes clearness;—*clearness*, from the two kindred imperfections of *ambiguity* and *obscurity*.

This, however, is but as it were a sort of *negative* quality consisting in the absence of two peculiar imperfections, each of them diminishing, as far as it goes, the benefits attached to copiousness.

3. Upon a yet lower level, presents itself the quality of *impressiveness*,—at any rate if considered by itself, viz. as having place no otherwise than in a case in which, in respect of the article of clearness, no deficiency has place.

A circumstance by which, in so far as importance corresponds with utility, the importance of this quality, viz. impressiveness, may, it should seem, be found to experience no inconsiderable reduction, is its liability to be rendered subservient to pernicious purposes in

Digitized by Google

a degree superior to that in which it is likely to be rendered subservient to purposes of a beneficial character;—the greater the intensity of passion, the greater its aptitude to be productive of pernicious consequences, and in the case of a discourse, the object or tendency of which is to operate upon the passions, the greater the degree of its impressiveness, the greater the degree of efficiency with which it is likely to operate upon the passions;—the greater the degree of intensity of the passion which it is the nature and tendency of it to excite.

4. and 5. Simplicity and compressedness,—lower still is the level on which these two qualities present themselves.

Of their utility, that part which is original and intrinsic, and which consists of the saving in time and labour, is comparatively inconsiderable.

The principal part consists of that secondary and *derivative* utility which is composed of, and increased by, their subserviency to the two qualities of primary and *intrinsic* utility, viz. *clearness* and *impressiveness*.

6. and 7. Lowest of all stand the two kindred qualities so nearly allied to purely physical ones, viz. *melodiousness* and *facility of utterance*.

Melodiousness,—still more the absence of the opposite quality, may, in some measure, be considered as subservient to impressiveness, but for this connexion it might perhaps be regarded in no higher character than that of a foreign and accidental *ornament*, not connected with any of the important ends and uses of language, and not having application to it, but in two portions of its field, viz. oratory and poetry.

Even as between these two, viz. melodiousness and facility of utterance,—facility of utterance presents itself as standing on one account, in so far as it has place, in an uncombined state, manifestly and considerably below *melodiousness*. By excellence in respect of melodiousness, other persons besides the speaker or writer,—other persons to the number of which, in the case of the writer, there are not any limits, and in the case of the speaker none but such as are not narrow ones, are gratified,—by deficiency in that same respect, proportionably more or less displeased;—by facility of utterance, in so far as it is separable, and exists separate from melodiousness, one individual alone, viz. the author, is affected, and he only in so far as the discourse being composed of signs of the *audible* kind, it comes accordingly to be made audible.

Section XI.

Of the Qualities desirable in Style, i. e. *in Language, considered as employed by this or that Individual.*

1. Simplicity. 2. Compressedness. 3. Clearness. 4. Impressiveness; and 5. Harmoniousness.—Among the several distinguishable qualities which presented themselves as desirable in language in general, in the whole structure of every language, by whatsoever hands employed, these five presented themselves; to the case of this or that individual, considered as taking in hand this or that language in particular, and applying it to his own purpose, whatsoever be that purpose, these same five qualities will, it is believed, be found alike applicable, and with equal propriety and advantage.

Of the several qualities desirable in the case of language in general, considered without reference to an individual employer of the instrument, there are two others, viz. copiousness, and facility of utterance or say pronunciability, which are not thus applicable.

1. Of these, copiousness seems scarcely to have any application to the case of an individual speaker or writer. In his case copiousness bears reference to the occasion and the subject. Occasions are not wanting with reference to which a sufficient degree of copiousness may be exhibited in the compass of a single word.* In so far as the language which he employs fails of being adapted, adequately adapted, to the subject, the most consummate writer or speaker will not be able to give to his style the quality of copiousness. In the native language of New South Wales, the most consummate master of the language of that country would not be able to deliver an intelligible argument in the English court of Common Pleas, in an action of Replevin, or on what is called a point of Practice.

2. Pronunciability, or Facility of Utterance.—In this we have seen another quality, the applicability of which will be found to be confined to the case of a whole language, in contradistinction to that of an individual considered as making use of it.

In so far as the language in which he expresses himself affords a choice, it will naturally be, especially in this experienced and polished age, among the cares of every well educated man, especially of the poet and the public speaker, to put aside rather than look out for any of those difficultly pronounceable sounds, which the usage of early times happens to have introduced into the language, and that of intervening times to have left in it.

But if, throughout its whole texture, the language abound in sounds of difficult utterance, the utmost possible skill on the part of him by whom it is employed, may be insufficient to give utterance to a discourse of considerable length without suffering uneasiness, and, in his intonation and deportment, exhibiting sensible marks of such his sufferance.

Without much toil to himself, a statesman of the Hottentot country might perhaps, for a considerable time, continue to display his elo-

* The word *away*, for instance.

Digitized by Google

quence; but to an European hearer, the idea of continual difficulty, and considerable uneasiness, would all the while present itself.*

One quality there is which will be seen to depend on the individual alone:—on the use made by him of the language, whatsoever it may be. For the designation of this quality no appellative more apt has been found than the word *dignity*.

By the word *dignity*, no such meaning is here intended to be expressed as that which is conveyed by the word *pomposity*.

With or without *dignity*, *pomposity* is a quality that may be given to a man's style by inappropriate choice of words taken singly,—by words selected for the purpose of impressing on the imagination the ideas of grandeur, sublimity, and importance, commonly at the expense of clearness,—words calculated to gratify the ear, with pleasure produced by appropriate melody and harmony.

The quality for the expression of which the word *dignity* is here employed, will be found to depend,—not upon the choice of terms taken singly, but principally or exclusively upon *collocation*,—and that not so much upon the collocation of words taken singly, as upon the collocation of whole sentences, and their component clauses or members.

CHAPTER V.

OF IMPROVEMENT CONSIDERED AS APPLICABLE TO LANGUAGE, OR THE MEANS BY WHICH, IN SO FAR AS THE PARTICULAR LANGUAGE EMPLOYED BY AN INDIVIDUAL ADMITS OF THE POSSESSION OF THEM, THE PROPERTIES DESIRABLE IN LANGUAGE MAY, ON EACH OCCASION, BE SECURED.

SECTION I.

Questions applicable to Improvements in Language.

To make an improvement, or improvements, in a language, is to cause it to possess, in a higher degree than it does at the time in question, some one or more of the qualities desirable in a language; of these, a list, as complete as it could be made, has already been given.†

An imaginable ulterior species of improvement would be the putting language in general, or this or that language in particular, in possession of some quality, of which, till the time in question, no language was ever possessed. But, if the list above referred to be what it was intended to be—a complete one, on this supposition this imaginary species is incapable of being exemplified and realized.

In connexion with this subject, the following are the questions which seem to call for an answer:—1. What alterations have a just claim to the title of improvements? 2. In what way, and in what manner, have they actually been brought about without design? 3. Whether any, and what improvements are capable of being brought about by design; in other words, in what shape, or shapes, the nature of language admits of improvement? And, 4. By what hands, and in what manner, improvement in these several shapes may be effected or promoted?

SECTION II.

What Alterations may be deemed Improvements.

Short is the answer which, for this question, may suffice. Of the qualities desirable in language, the following list has been given,—viz. 1. Clearness; 2. Correctness; 3. Copiousness; 4. Completeness; 5. Non-redundance, or simplicity; 6. Compressedness; 7. Pronunciability; 8. Melodiousness; 9. Discibility; 10. Docibility; 11. Meliorability; 12. Decorability; 13. Impressiveness; 14. Dignity; 15. Pathetically. In so far as this list is correct and complete, the answer to this question has been already given.

If the list above given be a complete one, then it is that, in the qualities contained in it, added to their respective opposites, we have all the qualities, good and bad, of which a language is susceptible; and, if so, then will every alteration, to which the name of *improvement* can with propriety be applied, consist in bestowing upon the language,—*i. e.* the aggregate of the words of which the language is composed, one or more of these qualities in a higher degree than that in which it was respectively in possession of them before. After, and in consequence, and in virtue of the improvement, the language will, *pro tanto*, and to the extent of the improvement, be more copious, more simple, more compressed, more clear, *i. e.* freer from ambiguity and obscurity, more impressive, more melodious, more easy of utterance, more ornamental, &c., than before.

SECTION III.

What Improvements take Place without Design.

Improvements made without design? No certainly; in all the several shapes in which all the several improvements that have ever been made, in none of them has it ever been made any otherwise than with the design of doing what was done. In what sense, then, without design? In this sense,—viz. without any general survey taken of the language; without any such thought as that of doing, on the individual occasion in question, that which, on that individual occasion, was done.

1. Copiousness. For the purpose which the individual had in hand, a new word is thought wanting,—he accordingly makes one.

* The language of that country is said to contain in it sounds unexemplified in any European language, and without a course of labour such as hath never yet been submitted to, not utterable by any European organs.

† See chapter v.

Digitized by Google

2. Simplicity. On the occasion in hand, a phrase, a word, a part of a word, which by others had been employed, presents itself to him, but presents itself to him in the character of a superfluous one, or as not better adapted, or as less fit than some other which presents itself at the same time,—he, in consequence, according to the nature of the case, leaves it, or throws it out,—forbears to employ it, or excludes it.

And so in the instance of the several other desirable qualities.*

Section IV.

By what Hands, and in what way Improvements in Language are capable of being effected, or promoted.

Individual and simple practice, individual instruction, free association, government authority,—by these several expressions, so many different hands by which, or so many modes in which, improvement, in this field, is capable of being effected or promoted, may be brought to view.†

In so far as in the nature of the case, improvement is capable of being introduced into language by practice,—by mere individual practice,—any individual may, with more or less prospect of success, take his chance for introducing it.

And by what means? *Answer,*—By clothing the discourse employed by him on each individual occasion, with all the several properties desirable on the part of human discourse; regard being had to the particular occasion on which it is so employed; these several properties being such as are subservient and contributory, to the several ends in view, for which, on the individual occasion in question, language is employed.

If, of these same properties, the above enumeration is complete, then so it is that, of every alteration held up in the character of an improvement, the effect, if that character does in any way belong to it, will be to invest it with those same properties, one or more.

In England, we hear of this or that man, operating in his individual capacity, having made improvements in language. We hear of Voltaire, of Junius, of Burke, of Johnson, of Goldsmith, as having given force to, or put a polish upon, the language of their respective countries.

Now, in what way can these men, any one of them, have made any improvement in the language?—that is to say, in the language employed by other persons, one or more or all? Answer,—Voltaire, &c., writes, other persons in number and proportion, more or less considerable, write, on this or that subject; with or without thinking that they are endeavouring to imitate him, they endeavour to write in the same or a similar manner.

Section V.

Externally applied Instruments of Improvement.

External instruments of improvement for augmentation of the usefulness of the several desirable properties of language, are—

I. For abbreviation of the signs; thence saving in the labour employed in forming, and thereby making use of them.

1. Short-hand applicable and applied to all subjects.

2. Alegomorphic abbreviation,—viz. 1. Figures instead of letter-press; 2. Algebraic characters instead of figures.

II. For diffusion, or say, giving increase to the number of the persons capable of receiving participation in the benefit.

1. Instruments whereby increase is given to the diffusion of audible and evanescent signs:—1. Stentorophic tubes; 2. Pipes, such as those employed in the conveyance of water and gas; 3. Cannon—for, to a limited degree, neither are these hostile instruments altogether incapable of being applied to a peaceable and useful purpose.

2. Diffusion by means of signs visible and permanent, independent of conveyance:—1. Letter-press substituted to manuscript; 2. Manifold mode of writing.; 3. Means of presenting to the view of a speaker or writer the words he has need of,—Synonymation, as in the *Gradus ad Parnassum;* 4. Dictionaries, whereby of the idea expressed in this or that language, corresponding equivalents are presented in this or that other language.

3. Diffusion by means of conveyance:—1. Letter-post; 2. Telegraphs, diurnal and nocturnal.

III. Durability—increase given to.

Instruments of durability are engravings in stone or metal.

Section VI.

Rules for Clearness, i. e. *the Avoidance of Ambiguity, Obscurity, and Debility, so far as depends upon the choice of Words taken singly.*‡

Rule I. When the language affords a word appropriated exclusively to the expression of the import which alone it is your intention to express, avoid employing any word which is alike applicable to the expressing of that import, and a different one which may require to be distinguished from it.

Examples:—Substantives, adjectives, adverbs,—in the instance of all these parts of

* There is here a notandum, "go on bringing them to view in the same manner."—*Ed.*

† With the exception of a sentence or two on *instruction*, merely initiatory, *individual practice* is the only one of these that has been found discussed in the MSS.—*Ed.*

‡ For further remarks by the author on the subjects embraced in this and the succeeding section, see Nemography, in vol. iii. p. 233, *et seq.*

Digitized by Google

speech, frequent breaches of this rule may be found.

I. Substantives.—1. The word *taste* employed instead of the word *relish*. To *relish* a thing is to taste it with pleasure. Do you relish this peach? In this question there is no ambiguity, not even for a moment. But instead of this, oftentimes we find,—Do you taste this peach? and so in the case of almost any other source of pleasure; for example, a poem, a sonata, a building, a landscape.

In the French language, there exists no appropriate word by which pleasure is represented as an accompaniment of the perception indicated; no word expressive of, *I taste with pleasure*. *Gouter* is *to taste;* and for, *to relish*, there is again this word, and no other. In French, therefore, this imperfection, this ambiguity and inadequacy, this incompleteness, and consequent incorrectness of expression, is the result of necessity. In the word taste, when employed instead of the word relish, this imperfection is needlessly and inelegantly copied. Why? Answer,—from affectation and vain glory, to give the hearer or reader to understand that the speaker or writer is so well acquainted with that foreign language, that it is more readily present to his memory than his own language.

II. Adjectives.—*Either* employed instead of *each*. To the word *either* belongs an exclusive signification, which belongs not to the word *each*. Where the idea of exclusion is not intended to be conveyed, how slovenly and absurd is it not to employ a word by which the exclusion is expressed? Yet of negligence in this shape, examples are continually occurring.

Poetry is the species of composition in which it is most frequent. There it has its excuse,—1. In cases where the monosyllable *each* would *not*, so it may be that the dissyllable *either* will suit the measure. 2. In poetry, distinctness is less requisite than in prose. A uniform distinctness would even be incompatible with the nature of the composition, and fatal to the design of it. To produce and keep up in the mind, confusion, so it be but accompanied with pleasure, is an object not of aversion, but of endeavour and study.

To affectation may the sin against propriety be imputed in this case, as well as in the last preceding one.

In saying *taste*, when he means *relish*, a man pleases himself with the thought of showing how familiarly he is acquainted with the language of *France*.

In saying *either*, when he means *each*, a man pleases himself with the thought of showing how familiarly he is acquainted with the language of poetry.

Affectation the genus, pedantry the species; formerly the dress most frequently worn by pedantry was *Greek* and *Latin;* latterly, it is French and poetry.

To the ambiguity attached to this impropriety, one circumstance alone operates in some measure as a palliative. If so it be, that for predicating what you meant to predicate alike of two things, A and B, the word you have employed is a word by which one of them is excluded: conceive the word repeated, then, one after the other, they are both of them comprised. First introduce A without B, then introduce B without A,—both of them are introduced; but how much better would it not be if, without any such unintended exclusion, both were introduced at once.

All, *every*, *each*, *either*,—these collective adjectives are none of them absolutely incapable of being employed for and instead of any of the rest; but they have each of them its appropriate and most proper sense.

Thus it is throughout, in regard to words which with reference to one another, in common acceptance and discourse, pass for synonyms. Take any two of them; by neither, perhaps, is exactly the same idea expressed as is expressed by the other. In many instances, however, so it is that without impropriety, and without inconvenience, one of them, perhaps either may be employed instead of the other.

III. The word *future* employed instead of the word *subsequent*. *Future* and *subsequent* are both of them names of relations, terms of reference. By each of them, two portions of time, an *antecedent* and a *consequent*, are brought to view. By the term *subsequent*, the point of time brought to view in the character of an antecedent, is that which, with reference to the state of things or transaction *spoken of*, was present; this alone, and not the *time at which* that same state of things or transaction, is spoken of. Thus stands the matter, in so far as concerns the word *subsequent*. In the use of it nothing of ambiguity is to be found.

Now as to the term *future;* but for the context,—from which, upon reflection, it may be concluded that the time from which the futurity is reckoned, was the time when the state of things or transaction spoken of was present,—that time would always be the time in which the discourse, if oral, was spoken, if in writing, was written.

From the promiscuous use made of these two words, suited to very different purposes, confusion and absurdity are continually arising.

IV. Restrictives, such as *alone* and *only*. By these words, what is constantly understood is, that the purpose for which they are employed is the narrowing the import of some word or other to which they are respectively annexed; that which in many cases cannot be collected but from the context, nor from the context without some difficulty, is, to which, of all the words in the sentence, the restriction is meant to be applied.

1. Substantive in the nominative case, (*i. e.* name of the agent.) 2. Adjective agreeing with do., (*i. e.* quality ascribed to the agent.) 3. Verb. 4. Substantive in the accusative

Digitized by Google

case, name of the patient. 5. Adjective, agreeing with do., (*i. e.* quality of the patient.) 6. Adverb, in the character of the name of a quality, of a quality annexed to one or other of the adjectives or to the verb; frequently to any one of these, with more or less propriety, may the restriction be considered as applicable.

In English, what thickens the confusion is, the indeterminate character of the restrictives, *alone* and *only*. Each of them is employed sometimes in the character of an *adjective*, sometimes in the character of an *adverb;* to exhibit the different cases in which each, in contradiction to the other, is most proper, would of itself be a task of no inconsiderable length.

Required to exhibit so many forms, by means of which in the several cases, where the restriction is meant to be applied exclusively to the objects respectively signified by several parts of speech, it may in such sort be applied to these several subjects, that no misapplication whatsoever, howsoever transient and momentary, can take place.

To solve this problem would be a task of no inconsiderable length and labour,—but at the same time, of no inconsiderable use.

If of the words alone, and only, the one were always an adjective, the other always an adverb, the difficulty of the task would be much less than it is; but, unfortunately, as has been just observed, no such constant distinction has place.

V. Ordinals: more especially the word *first*.

Of the aptitude of this term to involve in ambiguity the import of the sentence in which it is employed, the causes are of the same nature in this instance, as in that of the restrictives, *alone* and *only*, viz.—

1. Uncertainty of the part of speech, and thence of the subject, to which the attributive is meant to be applied.

2. Uncertainty in regard to the part of speech to which it is meant to be considered as belonging, viz. whether an adjective or an adverb.

Example of the mode in which the ambiguity may be avoided.

1. Ambiguous expression.—Columbus first saw Hispaniola.

2. Correspondent pair of sentences, by which the existence of the ambiguity, and at the same time, the mode of avoiding it, are indicated.

(1.) Columbus was the first person who ever saw Hispaniola.

(2.) Of the islands now called the West India Islands, Hispaniola was the first that Columbus discovered.

The plural number is, in a particular degree, liable to be productive of perplexity and misstatement.

Rule II. For remedy, substitute the singular to the plural number where substitutable without impropriety; and by one means or other it may generally be so substituted.

Rule III. Unless for special reason, by whatsoever name an object has once been designated, by that same name and no other, continue to designate it, or if, on any account, you find it matter of necessity or convenience to employ for that purpose this or that other name, take care to give notice of the change.

Eadem natura, eadem nomenclatura.
Whene'er the same nature,
The same nomenclature.

Converse of the above Rule.—Whatsoever be the object, for the designation of which a given word has been employed, employ not that same word for the designation of any other object; unless so it be, that the word being a generic one, on the first occasion it was employed for the designation of the whole genus or of one species; on the other occasion, for the designation of another species of the same genus.

Rule IV. Prefer verbal substantives to verbs.

Numerous are the instances in which, for the giving expression to the import in question, a single word in the form of a verb, may in some sort suffice, and is frequently made to suffice; and a verbal noun from the same root, with the addition of some verb of extensive sign, and proportionally frequent use may also serve; as when, instead of *to apply*, the phrase *to make application* is used. From this substitution convenience is frequently found to result.

The noun from the same root is commonly a *verbal noun;* a *verbal noun* of that sort, which serves to designate, in the first place, the species of action, for the designation of which, the verb, including all the several adjuncts and modifications* belonging to that complex part of speech is used; and thence, by an almost imperceptible transition, the state of things produced by that same act.

This verbal noun, when thus obtained in a state of separation from these adjuncts, which, form so many parts in the composition of the very complex part of speech called a verb, and which in this its separate state, becomes the name of a sort of fictitious entity, of a sort of fictitious body or substance, is, in this state, rendered more prehensible. Being thus prehensible, it is more easily, and thence, directly brought to view, and being thus brought to view, it is capable of being employed as a common subject to any number whatsoever of

* Viz. The adjuncts designative of the time of an action, the number of the person or persons concerned in it, and the point of view in which in respect of certainty, the act in question was contemplated.

Digitized by Google

propositions that may be requisite for predicating, whatsoever the nature of the case requires to be predicated, of the sort of act in question, or of its result.

By means of a few verbs of extensive import, such as the above word *make*, capable of serving, as it were, in an *auxiliary* character, introduction may, in most cases, be given by each of them to a large number of names of fictitious entities, and the advantage in question compassed to the utmost extent, of which it is susceptible.

When a characteristic verb, thus capable of being resolved, into a correspondently characteristic verbal noun-substantive and an uncharacteristic auxiliary verb, has been employed, a practice not unfrequent is, to follow it by some relative which has for its antecedent the verbal noun, the import of which is implied in that of the characteristic verb; subjoining, or not subjoining, to it the antecedent noun thus implied.

Example 1. The implied antecedent brought to view as if repeated.

If you would gain the populace, upon every favourable occasion apply yourself to their senses; *this application* will do more for you than the closest train of reasoning.

2. The implied antecedent not brought to view, but only tacitly and implicitly referred to.

If you would gain the populace, apply yourself upon every favourable occasion to their senses; this will do more for you than the closest train of reasoning.

If the verbal noun, the name of the fictitious entity, have, in a preceding sentence, been expressly brought to view, the repetition of it in the succeeding sentence, will have the good effect of reviving and strengthening the first impression. On the other hand, insert the verbal noun in the succeeding sentence, without having inserted it in the first, the consequence is that, in this way of speaking, a sort of false intimation is conveyed,—an intimation, that the verbal noun employed in the succeeding sentence, had already been employed in the preceding one.

Leave the verbal noun altogether uninserted, the result is still more awkward. "*This will do* so and so;" what is it that will do so and so? To this question no answer being given by the writer, the reader is left to hunt for one.

Rule V.—When, for the designation of the idea in question, no other appellative is in use but one which is tainted with ambiguity, presenting in conjunction with the idea required, another which is different from it, and which, on pain of being led into error by it, must be distinguished from it, or say, seen to be different from it,—substitute another word which is free from all ambiguity, presenting to view no idea other than that which is wished and endeavoured to be presented by it.

Example gathered from the field of penal law.—To acts considered as having been taken for the subjects of prohibition, is universally applied the appellation of *offence*. But when in regard to these acts, the desire is, to present to view the quality, or say, property, on account of which they have been constituted, or it is in contemplation to constitute them, offences; for conveying this idea, no other word is in use than this same word *offence*. By law the act is made an offence,—and why? Answer.—Because in its own nature it is an offence. Generally speaking, the idea, which in this case is associated with the word offence, is that of *maleficence*, that is to say, the property which the act, to which this appellative is attached, has, or is supposed to have, of making a defalcation more or less considerable, from the aggregate happiness of the community. In so far as the greatest happiness principle is the ruling principle, on no other ground can any species of act be taken in hand by the legislator, and by prohibition and eventual punishment, constituted an offence.

This ambiguity, it has seemed to me, matter of high importance to remove. Accordingly, continuing to employ the term offence, for designating the fact of the act having been taken for the subject of prohibition,—for the purpose of bringing to view the quality, in consideration of which it was my desire to see it thus dealt with, I employed the word *maleficence*; giving to the act in which this quality was beholden by me, the appellation of a *maleficent act*.

Once having become sensible of the need there was of a word for this purpose, and having accordingly formed the determination of being on the *look-out* for such an one, I soon found that I had not far to look: *beneficent*, *beneficence*, were words already not only in the language but in every mouth; in the language (the Latin) from which they were derived, correspondent and opposite to them I saw the words *maleficent* and *maleficence*.

Thenceforward, instead of not knowing what to say, unless it were in a roundabout way, or saying, this act is an offence, and therefore ought to be made an offence, it has been my custom to say the sort of act thus described is a *maleficent act*, and *that* in such sort and to such an amount, that by apt prohibition, backed by apt eventual suffering, it ought to be constituted an offence.

Section VII.

Rules for Clearness, and thence for Impressiveness, so far as depends upon Collocation.

Rule I. Wheresoever it is of importance that two objects be distinguished from each other, be careful so to order the expression as to render the distinction between them as clear, *i. e.* the contrast between them as strong, as may be.

Digitized by Google

Rule II.—When the two objects belong to the same scale, the difference between them is in degree, and in degree only. In that case, what is to be endeavoured at is, that that which is considered as entitled to stand at the higher degree, shall not be placed at any lower degree, that which ought to stand at the lower degree not at any higher degree, so that the difference of degree may be correctly indicated.

Rule III.—When the objects belong to the same scale, placing in the situation of *contradictory* propositions the two propositions whereby they are spoken of, does not place the differences between them in so *strong* or in so *clear* a point of view as that in which they would be placed by an indication of the degrees which they respectively occupy. Milled corn is not cold; ice is cold. By these expressions, how feebly and inadequately the difference in temperature between the two bodies is represented, is sufficiently manifest.

Rule IV.—When contrast is meant to be exhibited, keep to the same words throughout, till you come to those by which the contrast is meant to be exhibited.

Rule V.—For impressiveness, put not the names of two leading objects in one sentence, unless when they are under the same *regime*. *One thing at a time.*

Rule VI.—Of that idea which is the principal one, and to which in the sentence in question the purpose requires that the attention should be principally attached, put the sign in the first place, or as near the first place as the state of the grammatical relation will admit.

An inconvenience attendant on this mode of collocation is, that it will seldom be that which would be pursued, or without presenting the idea of affectation could be pursued, in oral discourse. It is on this account with reference to the most usual order of discourse, termed inversion.

But the reasons which perhaps would render this mode of collocation difficult and unusual, and thence unpleasant, in oral discourse, do not apply, at least with equal force to written; since in this case for marshalling his words in such sort as to him seems best, a man may then take whatever time is necessary.

Rule VII.—Use antecedent modifications. 1. They prevent instead of correcting misconception. 2. They excite the collateral idea of self-command on the part of the speaker or writer. This is *the*, or *a*, reason why I find it not pleasant to begin a sentence with a nominative case.

Rule VIII.—Every clause not expressly *ampliative* is restrictive.

Rule IX.—When in relation to the clause in question, having the effect of a limitative, ampliative, or in any other way modificative, clause, your intention is that the import of it shall be understood as applying exclusively to some one, to the exclusion of one or more other clauses, the nature of the case affords two expedients, either of which will suffice for insuring the production of the desired effect.

1. It is only in one case that the first of them applies; and that is, when the clause to which it is intended that the modification should be considered as applied, is that which it is intended should stand before any of the others to which it would be capable of being applied. In this case put the modificative clause before the clause intended to be modified; and in this way modificative clauses in any number may be made to precede, and by that means exclusively attach upon one and the same modificand.

2. The other expedient is applicable to all sorts of cases. It consists in inserting the modificative clause within the modificand. By this means it is to this modifiable clause to the exclusion of all other modifiable clauses, that it will be found applicable.

In the wording of acts of Parliament, and indeed in discourses in general, this expedient is pretty generally employed, and that with manifest good effect.

Rule X.—Between an antecedent substantive and its relative, be careful not to interpose any word, capable of being, though it be but for a moment, understood as meant to be taken for the antecedent of that same relative.

Rule XI.—The list of topics given, treat them in the same order,—*change not the order.*

Rule XII.—When of two or more ideas brought to view in the course of the same proposition, sentence, or clause, there is some one to which, whether to the exclusion of, or in preference to, the rest, it is your wish that for the purpose of its being impressed into his mind with a pre-eminent degree of force, the attention of the hearer or reader, to the end that he may take particular cognizance of it, should be pointed, contrive so to turn the phrase, as that the word or words designative of that idea, shall occupy the front of the sentence.

Example.—Say, "When it is by word of mouth that the communication is made;"—rather than, "When the communication is made by word of mouth."

In the latter form, the attention is divided between the consideration of the general fact of the making the communication in question, and that of the particular mode in which that operation is proposed to be performed, and by this division, the impression made by the words indicative of the particular mode is more or less weakened,—in the first form, the attention is without division fastened at once upon the only one of the two objects to which on the particular occasion in question it was meant to attach it; the attention is pointed to one of the two objects in *preference* to the other at least, if not to the exclusion of it.

Rule XIII.—Place not in a strong light,—place not in an impressive point of view, two propositions,—two clauses in the same sentence.

Digitized by Google

For example,—a principal clause and a clause which is employed to modify it,—or say a modificative clause.

Reason.—When upon the same level in the scale of importance, two objects are thus placed at the same time, the consequence is, that between the one and the other the attention is distracted; it takes not a sufficient hold of either of them. Present them to the mind one after another, it grasps them with its undivided force.

Section VIII.

Rules for Correctness and Completeness.

Rule I.—Correctness.—The more extensively general the terms you have occasion to employ, be the more careful in examining the species contained under the generic appellation employed, and in considering whether that, whatever it be, which you predicate of the genus, is with truth predicable of these several species.

Rule II.—Completeness, or say comprehensiveness.—When on the occasion of any sort of operation which is productive of beneficial effects when performed in relation to a certain species of subject matters, look round for the several genera within which the species in question is contained, and consider whether with correspondent beneficial effects the same operation may not be performed upon the other species contained in that same genus, all or some of them.

So as to objects analagous to the one in question, without being *congeners* to it. By this means are inventions produced.

Section IX.

Of the Improvement of Language in respect of Copiousness.

General Rule.—Exceptions excepted, the more copious a language the better. New words and new combinations, to one or other of these heads may every improvement of which language is susceptible in respect of copiousness be referred.

In whichsoever mode any addition is made to the pre-existing state of instruments of discourse, the addition is *primâ facie*, and, saving particular exceptions entitled to be set down to the account of improvement.

Particular reasons apart, for the same reason that the first word that was ever invented was an addition to the stock of instruments of enjoyment and security; in a word, to the instruments of wellbeing, so *has* every other been, and so *will* every other *be*.

On this head, therefore, the general rule is, *The more copious a language is, the better*,—the better adapted to the purposes of language.

But to this general rule particular exceptions are not wanting. As to the grounds of these exceptions, and thence as to the rules in cases of exception that have place under this general rule, their place will be found under the head of the next-mentioned article upon the list of qualities desirable in language, viz. *simplicity*.*

Generally speaking, there exists in language a natural tendency to improve itself, or, to speak strictly, to become improved in respect of this desirable quality. The same causes, by the operation of which the earliest and scantiest stock of the instruments of thought and conversation were produced, continue in action, and will continue in action, without end. Observation, experiment, experience, reflection, discovery, invention: all these are so many seeds of language, seeds from which new additions to the stock of words and combinations in every language are continually springing up.

As there exist cases in which the alteration made in language by increase given to the number of words, and combinations of words, of which it is composed, *cannot*, with propriety, be set down to the account of advantage, so are there cases in which, though the addition, if made, is or would be of an advantageous nature, yet, the addition finds the introduction of it opposed, by various springs of human action, by various principles of human nature.

Indigenous weakness, viz. in the intellectual faculty, sinister interest, interest-begotten prejudice, adoptive prejudice; in this part of the field of action, as in every other, will human felicity find these its enemies set in array against it, and opposing its progress at every step; while, in so far as the mode of enrichment is unserviceable in any instance, the interests of all mankind are opposed to it.

Section X.

Modes of Enrichment.

On the occasion of the explanation of the modes in which a language is capable of being enriched, two objects require to be considered, viz. 1. The *source* from which the addition is derived; 2. The mode in which it is made.

Say enrichment *ab intra*, or home-drawn, in so far as the addition is drawn from the same language,—*ab extra*, in so far as it is drawn from any foreign language.

Simple modes of enrichment are,

1. Indication of particular properties as applied to a given genus—as expressed by a generic name of any degree of amplitude. Examples of this mode of enrichment are afforded by the several branches of Natural History and Natural Philosophy.

2. Spiritualization or psychologization, in so far as of any name of any physical substance, operation or quality, application is made to the purpose of giving designation to any cor-

* See above p. 310, and note † attached to it.

Digitized by Google

respondent, or supposed correspondent, psychological substance, operation, or quality; the psychological object being modelled from the physical archetype, as a bust in clay from any part of the human figure.

3. Formation of new words on the ground of analogy. Example—from beneficence, maleficence; from beneficial, maleficial.

4. By composition. The composite mode in which enrichment is performed, is *per inequalitatem*, the words conjoined being in their import of unequal importance with relation to each other, the one may be considered as the principal, the other as being, with relation to it, the accessory word.

In this case, let the number of words thus related and entering into the composition of the compound word be supposed to be no more than two, the place of the accessory word will either be anterior or posterior to the principal; if anterior, it may be termed, with relation to it, a *prefix*,—if posterior, it has been called, in Latin, a *suffix*.

Where the mode of enrichment is by composition, it may be distinguished into:

(1.) Composition by simple aggregation, or agglutination, or coalition, viz. without change in the signification of either of the two constituent elements, and without the need of supposing the addition of any other word as necessary to complete the sense.] [Of this sort is that which has place between a subject in the grammatical form of a *substantive*, and the name of an epithet or adjunct in the grammatical form of an adjective, as in the case of the words vain-glory, fee-simple, plain-dealing.

(2.) By aggregation with ellipses. Examples, 1. Churchyard, *i. e.* yard of the church: words omitted by ellipses, *of* and *the*. 2. Foot-ball, ball for the foot to play with by kicking it. 3. Mother-country, country which was as it were a mother to the person or persons in question.

5. By importation of words from other languages, dead or living.

6. By addition to, not to say completion of, each set of conjugates. A noun, taken in its several cases and numbers; a verb, taken in its several moods, tenses, numbers, and persons. These aggregates may be considered as so many grammatical conjugates. By the term logical conjugate, may be designated the aggregate of these same aggregates,—the whole stock of the aggregates capable of being formed of those aggregates.

In the Greek and Latin Lexicon, or, say Dictionary, of Scapula, may be seen the several lists, of logical conjugates made to grow out of the same root; say, out of some noun-substantive, taken in hand and considered as a root. Of the several branches, or, say ramifications, thus seen growing out of one and the same root, each one is expressive of an idea bearing a determinate relation to the idea designated by that same root.

Section XI.

Importation of Words from Foreign Languages, dead and living—its Advantages and Disadvantages.

There exists not that state in life, be it ever so humble, in which a man's wellbeing is not, in some shape or other, in some degree or other more or less dependent on the acquaintance he has with his own language,—of the language in which he not only converses but thinks. Language being not merely the instrument of discourse but, moreover, the instrument of thought, the stock of a man's ideas is limited and determined by the stock of the words which he finds at his command for giving expression to those ideas.

In every language, words are found in clusters growing out of the same root. Whatsoever be the cluster to which the word in question belongs, the comprehension a man has of its import is comparatively imperfect, if it include not a more or less general acquaintance with the whole cluster to which it belongs. In the stock of words of which the English language is composed, a very considerable, not to say the largest, portion, are borrowed from some one or other of several foreign languages; in some instances at a very early date, in others at different points of time from the remotest down to the most recent. In some instances these words so borrowed were transplanted in a single state, in others in large clusters, in others in smaller clusters, which, after transplantation, have gradually grown into larger ones.

When a word has thus been transplanted and naturalised in a single state, the conception entertained of its import by persons altogether unacquainted with the cluster to which it belonged in the language from which it was borrowed, is always very obscure and imperfect in comparison with that which he has of a word which forms one of a cluster, more or less complete, originally of the growth of his own language, or fully rooted and naturalised in it.

These languages are some of them of a northern, some of them of a southern origin; of the northern, the one principally borrowed from is the German; of the southern, the French. Among ancient languages, those principally borrowed from are the Latin and Greek. The Latin being the language from which the French has borrowed a great part, perhaps the largest part, of its words; hence in the instance of many words of Latin origin, it remains a question whether the word was derived from the Latin immediately, or remotely, through the medium of the French. The Greek being the language of the writers from whom the first crude notions respecting most of the arts and sciences were derived to us; hence the appropriate terms, expressive of the subject-matters and operations belonging to those several branches of art and science, have in a

Digitized by Google

large proportion been borrowed from that language. Even when the subject-matter, instrument, or operation, is itself new, a convenience is found, on several accounts, in taking its name from a foreign language, more especially from the Greek, rather than from our own.

For characterizing an object which not only is new, but is designed to be presented as such, a word as plainly new as the object itself is meant to be represented as being, is much more convenient than any old word taken from the old-established stock of words belonging to the language; for when any such old-established word is taken and thus employed, it comes with the whole of its original import adhering to it; and the consequence is that it presents to the mind instantly and to a certainty, a multitude of old ideas which on the new occasion it is not intended to present; and this in the most perfect manner, while it is only in a manner comparatively imperfect that it presents the new idea which it is intended to present.

Borrow the word from a foreign language, and that a dead one, from the Greek, for example, this confusion is avoided. Let but the reader have once succeeded in his endeavours to establish an adequately constant association between the new idea you mean to impress upon his mind, and the new-coined or imported word employed by you for expressing that idea, (for which purpose, in the first instance, an explanation, more or less particular, will, to persons unacquainted with the language so borrowed from, be always necessary,) thenceforward, as often as the new word is presented to his mind, the idea which it brings with it will be the very idea which it is your desire it should present; that and no other, that idea alone, unaccompanied by, and unclogged with, any other. By the very description of it thus given, this mode of proceeding, it is however evident, has its difficulties, and thereby its inconvenience.

The difficulty consists in getting men to give themselves the trouble of establishing this association; whereas, when the language from which the word is taken is a man's own language, the association, such as it is, is already formed; and howsoever clumsy the new appellative appears, and howsoever troublesome the cluster of collateral and (with reference to the purpose in question) irrelevant ideas it stands associated with, and however confused and inadequate the import is which it has the effect of presenting, still it can scarcely fail of bringing to view an import having some similarity to the one which it is intended to present; whereas, if it be a word of altogether foreign original, no other word of the cluster it belongs to being presented to the mind of the person in question, the necessary result is that, if the explanation attached to it has either never been received into the mind, or, after having been so received, has dropped out, the word is so much unmeaning sound, not presenting any the faintest intimation of the import which it is intended to present.

CHAPTER VI.

ANALYTICAL VIEW OF THE MATTER OF THOUGHT AND INTERNAL ACTION; CORRESPONDENT VIEW OF THE MATTER OF LANGUAGE.

SECTION I.

Thought the Basis of Language.

Of language, the primary and only original use is the communication of thought, the conveyance of thought from mind to mind, from the mind of a speaker to the mind of a hearer.

All thought belongs either to the intellectual or to the volitional department of the mind—to the *understanding* or the *will*.

A portion of the matter of language is frequently termed a discourse.*

By every portion of discourse, communication is endeavoured to be given of the state which, in some respect or other, one or the other of the above departments of the speaker's mind is in.

Acts of the intellectual department or faculty are, 1. Simple perceptions;† 2. *Sensations*, i. e. perceptions attended with pain or pleasure; and 3. Judgments or Opinions. Remembrance is but the work of a particular species of perception. Of the general faculty of sensation, a particular impression is the exercise or exemplification of the *memory*, the correspondent idea, *i. e.* the copy of that same impression as taken by and preserved in the mind.

Of judgment, the *subjects* are, 1. Points of similitude between object and object. 2. Points of dissimilitude between object and object. 3. Existence or non-existence of the relation of cause and effect as between object and object.

Simple perception is not capable of erring, no, nor sensation neither. But judgment is, on the part of every person, and on almost every occasion exposed to error.

A state or act of the mind in which judgment is continually included, is apt to be considered as an exemplification of perception alone, or sensation alone. Such is the case with all instances of the exercise of the organs of sight and hearing. I see a hill, *i. e.* what appears to me a hill; but oftentimes when what a man sees is believed by him to be a hill, it is in reality a cloud. I hear the rain, but oftentimes when a man thinks he hears the

* This word is necessary, for if instead of a discourse you were to say a language, the import expressed would be quite different from that which is here intended.

† For the distinction between impressions and ideas we are, it is believed, indebted to David Hume.

Digitized by Google

rain falling, the cause of his perception is not rain, but the wind whistling through certain trees.

When as above, desire, (the state or act of the will,) and simple perception or sensation, (the state or act of the understanding,) are excepted, all that the mind of man is capable of containing is an act of the judicial faculty—an opinion, a judgment: an opinion entertained by himself, entertained in his own mind. This is the only immediate subject of any communication which, concerning the state of that faculty, can be made. Of no matter of fact, external to, of no matter other than that which passes in his own mind, can any immediate communication be made by language. Opinion, an opinion entertained by the speaker, this is all of which, in any instance, communication can be made. Of an opinion thus expressed, any imaginable matter of fact, real or supposed, may have been taken for the object. But that to which expression is given, that of which communication is made, is always the man's opinion, *i. e.* that which, in so far as the expression answers its intended purpose, that which he wishes should be taken for his opinion in relation to the subject in question, nor anything more.*

Be this as it may, the strictly logical consequences are the only ones that belong to the present purpose.

One is,—that, in every portion of discourse which is not the expression of a desire, a simple sensation, or a perception; in every portion of discourse, for example, by which the existence of a matter of fact exterior to the person of the speaker is asserted,—is included a communication made of the state of the judicial department of the speaker's mind, an opinion entertained in relation to that same matter of fact.

This being the case, a certain degree of complexity attaches to every proposition, the simplest imaginable not excepted, which has for its subject a matter of fact at large.

Eurybiades struck Themistocles. By a proposition in these words, what is it that I assert? It is this: *It is my opinion* that Eurybiades struck Themistocles. This is what I can be sure of, and it is all that, in relation to the supposed matter of fact, it is in my power to be assured of.

This pen exists,—meaning the pen employed in the tracing of these characters. This pen exists, *i. e.* my opinion is that this pen exists. Such is very decidedly and firmly my own opinion. But of no pen with which he ever wrote would any such opinion have been entertained by Bishop Berkeley.

Thus it is, that, in respect of this complexity—this constant and unavoidable complexity,—the expression of the mode of being of the intellectual department agrees with the expression of the volitional department of a speaker's mind.

Come hither. By this discourse, as every man will acknowledge, at the very first hint, what is expressed is, that it is my desire that the person to whom I speak should so do.

He is there. By this discourse, in like manner, what is expressed is, my opinion that *he* (the person spoken of) is in the place alluded to by the word *there.*

The consequence is, that in saying,—He is there,—the *proposition,* simple as it is in appearance, is, in its import, complex; and if it be considered as designating, expressing, communicating, the whole of the object of which it is employed as the sign, viz. the mode of *being* of my mind, it is *elliptical.* That to which it gives expression is the supposed matter of fact which (supposing me to speak truly) was the object of my thought;—that of which it does not contain the expression, is that *thought* itself; the only matter of fact of which the discourse in question is strictly and immediately the assertion, is left to be inferred from the context, from such words as are actually uttered.†

In all ordinary discourse propositions come entire, it is only on the occasion of some science or art, that, unless where employed instead of a proposition, and by ellipsis or abridgment, containing in it the import of an entire proposition, any term is presented by itself. Every man who speaks, speaks in propositions, the rudest savage, not less than the most polished orator,—terms taken by themselves are the work of abstraction, the produce of a refined analysis:—ages after ages must have elapsed before any such analysis was ever made.

Of the above observations, another logical consequence is this, viz. that for the giving expression and conveyance to any thought that ever was entertained, so far as concerns *import* and not *discourse,* nothing less than the *import* of an entire proposition, and that, as above, a complex one, ever was, or ever could be made to serve.

Not but that in many instances for the making communication of thought, even a single word is made to serve. But then it is by means of other words, which, according to the occasion, the single word in question may have the effect of suggesting as effectually as

* From this observation various practical inferences of the moral class may be seen to follow:

1. All reliance on the opinion as supposed of others, is in fact reliance upon a man's own opinion; viz. upon his opinion concerning the credit due to the opinion which in the instance in question is attributed to those others.

2. That in other words all bigotry is grounded in, includes in it self-conceit.

† It might thus be shown that these propositions which are given by the Aristotelians as simple and entirely expressed propositions, are complex and imperfectly expressed.

Digitized by Google

by this same single word, the ideas constantly associated with it are suggested.

Looking at my son, whose name is John,—I say to him, John,—he hears me,—what is it that he understands by this? The import, the full import, belonging to one or other of these two phrases. My desire is that you *attend*, (viz. to what more I am about to say,) or, my desire is that you come, *i. e.* come near to the place at which I am sitting.

And thus it is by bringing to view other words, in the character of words of which, though not pronounced, the import was meant to be conveyed by the word which was pronounced, that a single word may be made to have the effect, and thus, as it were, comprise the import, of an indefinite number of other words,—of a discourse of an indefinite length.

This being the case, if nothing less than the import of an entire proposition be sufficient for the giving full expression to any the most simple thought, it follows that no word, being anything more than a fragment of a proposition, no word is of itself the complete sign of any thought.

It was in the form of entire propositions that when first uttered, discourse was uttered. Of these integers, words were but so many fragments, as afterwards *in written discourse* letters were of words. Words may be considered as the result of a sort of analysis,—a chemico-logical process, for which, till at a comparatively much later period than that which gave birth to propositions, the powers of the mind were not ripe.

With a view, however, to save the words which would be required to point out this complexity, such propositions as are only in *this way complex*, may, for some purposes, and on some occasions, be considered and spoken of as *simple*.

Upon this field of observation the logic of Aristotle and his followers did not penetrate. The subjects it began with were *terms*, *i. e.* words of a certain description, and beginning with the consideration of these terms, it went on to the consideration of propositions in the character of compounds capable of being composed out of these elements.

Antecedently to all particular inquiry, in an inquiry the subject of which was confined to the signs of thought—in an inquiry in which no attempt was made to look into the thoughts signified, in the conception entertained in relation to the nature of thought, and of the diversification of which it is susceptible, much clearness, correctness, or advance to completeness, could not naturally be expected.

These terms are accordingly spoken of as possessing of themselves an original and independent signification, as having existence before anything of the nature of a proposition came to be in existence;—as if finding these terms endowed, each of them, somehow or other, with a signification of its own, at a subsequent period some ingenious persons took them in hand, and formed them into propositions.*

But the truth is, that in the first place came propositions, and that out of these propositions, by abstraction and analysis, terms possessed, each of them, of an independent import, were framed.†

Condillac—for the purpose of elucidating Locke's doctrine that all ideas grow out of sensations, and but for such sensations could not have existence—imagined to himself the idea of a statue, and enduing it successively with the five senses, and such combination of them as promised to afford instruction with reference to this, his purpose, exhibited to view the furniture of the different orders of minds with which the statue would, in this way, be provided.

Proceeding thus, was proceeding in the way of synthesis:—synthesis means putting together. Proceeding thus, he took in hand, in the first place, as a basis for the rest, the most simple element he could find, and adding to this one, other elements one after another, exhibited, in this gradual way, the contents of all the several compounds capable of being made, and which, accordingly, are the most compounded of those in experience found to be made out of those elements.

Equally well adapted has this same method appeared to be for exhibiting to view, in the order of simplicity or complexity, (it may be denominated in either way,) the results that have been produced by putting together the several ideas respectively denoted by the several sorts of words of which language is composed.‡

Of language in its origin, the parts could not have existed in a degree of simplicity, equal

---

* By the synthetic method, as syllables now form words, and letters form syllables.

† Brutes have no terms,—their language is all in propositions; their faculties enable them not to break them down into words.

‡ A warning which on this occasion and in this place it seems necessary to give, is, that the order which in the endeavour to give a clear, correct, and comprehensive view of the matter of language, considered in its most extensive portions and diversifications, those styled grammatical included, it has been deemed necessary to pursue, is not the same with, but very different from, the order in which in the progress of society they were developed.

By the distinctions pointed out by the different aggregates of words, termed by grammarians the parts of speech, the process of methodization has been applied to, and carried through the whole multitude of these numerous signs. But for the carrying on of the sort of mental process styled methodization, in which is included a high degree of abstraction, a comparatively mature state of the human intellect was requisite; and not only at the time of the first commencement, whenever that was, but long after that time, the stage occupied by the human intellect in the scale of maturity must, in comparison with that stage, have been extremely low.

Digitized by Google

to that of the most simple of those at present in use. The first words must, in their import, have been equivalent to whole sentences, to sentences expressive, for example, of suffering, of enjoyment, of desire, of aversion.

Of this original language, the parts of speech called interjections are examples.

Of this nature is, and seems destined for ever to continue, the language of quadrupeds and other inferior animals.

To form the words of which language is at present composed has been the work of analysis. The original sentences were, as it were, broken down into words, these words into syllables, and these syllables, by the help of written and visible signs, into letters.

Of these elements, thus formed by analysis, those called words will now be to be put together in the way of synthesis.

The task here undertaken is to take up the several classes of words denominated by logicians, in consideration of the connexion between their respective imports with reference to one another, conjugates, and beginning with that one of which the import is most simple, not admitting of being analyzed into others more simple, to apply to it the several other classes of which the respective imports are more and more complex.

Of this theoretical labour, the practical use is this: by the observation of the compounds already made, and the conveniences with reference to the ends of language respectively derived from them, to show how the number of them may be made to receive increase, very considerable increase, and in respect of its several useful and desirable properties, the utility of the instrument called *language* may be made to receive increase.

Language has its logical and its chronological history: its logical history shows what must have been the order of formation among the elements of language—shows it from the nature of man, shows it from the circumstances in which all men are placed, shows it from circumstantial evidence. The chronological history of language shows what has actually been, &c.*

In language are to be considered, 1. The ideas designated; 2. The signs employed in the designation of those ideas.

As to the signs, they have been for the most part arbitrary, bearing no naturally characteristic analogy to the things respectively designated; when considered apart from the ideas, no very considerable instruction, comparatively speaking, is accordingly derived from the consideration of them.

Being arbitrary, they have accordingly been infinitely diversified; taking the human species in the aggregate, one and the same idea having found employment for signs to the number of some hundreds at least, not to say thousands, in the expression of it.

In a very different case are the ideas themselves. These being the furniture of the mind, and mind being, in fact, a property of the body—in the sort of fictitious language without which it cannot be spoken of—a sort of inmate of the body, the differences between minds, that is to say, the furniture of minds, are not greater than the differences between bodies.

Hence it is that, in the history of the formation of ideas, *i. e.* of the order in which the several ideas thus characterized by their several sets of signs have made their appearance, there must, throughout the whole human race, have been a considerable degree of sameness.

Section II.

Of Conjugates.

By grammarians, who may be considered as a tribe of logicians, operating in a particular quarter of the field of logic, the term *conjugates*, or, at any rate, the nearly allied terms, to conjugate, and conjugation, have been employed of old.

By logicians, to the import of these terms a considerable and very useful extension has been given.

By grammarians, the *aggregate*, or say *cluster* of connected words, called by them a *verb*, has been said to be conjugated when, in conjunction with the characteristic fundamental portion of it, the several modifications by which—the several varieties by which tense, mood, person, number, to which in some instances is preposterously added gender, *i. e.* sex stand expressed,—have been exhibited and recited; and the groups, in so far as for the expression of these modifications of the fundamental import, words more or less different in sound are employed, are said to belong to so many different conjugations.

With the same propriety and convenience as that with which the terms *conjugation* and *to conjugate* were applied to the cluster of intimately connected words called a *verb*, might they have been applied to the other cluster of intimately connected words called a *noun*, as diversified by the several modifications called *cases*, in addition to those by which the designation of the several varieties of which sex, person, (viz. with relation to the speaker, the hearer, and others,) and number are susceptible,—by which so many correspondent varieties, in respect of sex, person, and number, are expressed and brought to view.

As it happened, no such extension, however, was made. In the case of a noun, instead of *conjugation* and *to conjugate*, *declension* and *to decline*, were the words employed.

Applied to the cluster to which they were applied, viz. to the verb, the terms conjugation and to conjugate were apposite and expres-

* This last sentence of the paragraph seems to be a mere notandum, or the proposed commencement of a definition of the chronological history.—*Ed.*

Digitized by Google

sive. *Jugum* is the Latin word for a *yoke*, an instrument by which a number of animals employed in draught are connected with each other and with the burthen which is to be drawn: connected with each other for that common purpose.

The cluster of words called a verb, presents to view a fundamental or radical import to which, throughout the whole cluster, expression is given by some letter, or combination of letters, which has place in every one of the component words, and by which, as by a bond of union, they are connected together, and made up into one *whole*.

Exactly of the same sort is the connexion, which, in the different parts or portions of the part of speech called a *noun*, has place.

In the instance of a *noun*, the several sources of modification, designated by the words *person*, *gender*, and *number*, are designated by the same names as in the instance of the verb.

The sources of diversification, in respect of which the noun differs from the verb, are, on the part of the *verb*, the *moods* and *tenses*, which the noun has not; on the part of the *noun*, the *cases* which the verb has not.

When, a noun being given, a man names the modifications called cases, together with those which regard person, number, and gender, he is not said to conjugate it,—he is said to decline it. Associated with the import of the word *case*, is, according to the grammarians, the import of the words declension, to decline.

But in the instance of *declension*, the emblem or archetypal image exhibits no marks of such felicity as have been seen exhibited in the case of *conjugation*. Case is from *cado* to fall; an image borrowed by the Latin grammarians from the Greek grammarians. A rod is conceived to fall. In the nominative case, the mode of its falling—the direction in which it falls is considered as direct—perpendicular to the horizon, and is accordingly called *rectus*: in the other cases, it is considered as *oblique*, viz. with reference to the horizon: accordingly, all these several cases are, besides their peculiar names, expressed by one common name, and called oblique cases.

With indisputable propriety, and with no inconsiderable utility, if comprehensiveness of perception be of any use, have the logicians extended the application of these words, conjugation and to conjugate,—or at any rate, that other term so intimately connected with them, viz. conjugate, or conjugates, not only to the cluster of connected words called nouns, but to all words, the connexion of which is formed and evidenced by the circumstance of their containing in their structure the main portion, expressive of the principal and characteristic idea of the whole cluster.

In the combination of letters expressive of this characteristic idea, may be seen what may be termed the root of the cluster. In the whole word, whatever it be, which, if there were any difference in respect of time, presents itself as likely to have been the word first in use, we have the radical and *primitive* conjugate; in all the others, the several ramified branches, or collateral and *derivative* conjugates.*

On looking over the materials of which any language is composed, two distinguishable classes of words will be found: one which possess a sort of independent import, and suggest each of them an idea without the assistance of any other word; the other, which not suggesting each of them an idea of itself, serves no other purpose than that of modifying in some way or other, the idea suggested by those of the above-mentioned independent cast.

The former may be distinguished by the name of *principal*, the other by that of accessory words.

Taken together a principal when considered in connexion with one of these accessory words, may be termed a conjugate.

With each such principal term will be found connected accessory words in great number and variety; hence, in the case of each principal, as many different conjugates as there are accessory words found in connexion with it; and as among these accessory words, different classes will be found distinguishable, hence to each such principal, so many clusters of conjugates.

In some instances, the accessory term is found attached to the principal, forming but one word with it, in others not, hence the distinction,—accessory words attached,—accessory words detached; conjugates in the attached form,—conjugates in the detached form.

Where the accessory word is attached, in some instances it precedes the principal word, in others it follows it. Hence the distinction, —accessories prefixed, or in the way of prefixion; accessories suffixed; or where the word accessory is understood to be in question, leaving out that word, one may say for shortness, *prefixes* and suffixes.

Accessories, which in one language are attached, are in another not attached.

Accessories, which in one part of the same language are attached, are, in another part of the same language, not attached.

In this respect, taken in the aggregate, infinite are the diversities which language brings to view.

The greater the number, which in any language can be found, of those sorts of words called conjugates, the more manageable will the language be, and the fitter for all the purposes of language.

For the formation of these, the first and

* Among those things which it is desirable should be done, is to class those conjugates logically. Among the uses that may be made of such classification, would be the improvement of language, by the completion of the several forms of conjugates.

Digitized by Google

most obvious step will be, for a man to begin with the language in which he writes; *to take stock*, as they say in mercantile accounts, to form his inventory out of those articles which his own language furnishes, and then to see what, if any, enrichment it may be made to receive from other languages.

On this occasion, one subject of observation will be, the difference—the prodigious difference, between the degree, in which, in its present state, the language is stocked with this or that one sort of conjugate, and the degree in which it is stocked with this or that other sort of conjugate; in this or that one instance the number stretching to hundreds or even thousands, in this or that other, not going beyond units; when the same use, which is actually derived from the species of conjugate in those two or three instances, might, without inconvenience, be derived from it in the two or three hundred, or two or three thousand instances.

As a noun or a verb is a cluster of words, so a complete set of conjugates, formed upon the model of those already in use, and by analogy, each of them made complete, would include in it an aggregate cluster of all those clusters.

The different species of conjugates, in the logical sense of the word *conjugate*, are chiefly, if not exclusively, formed of either terminations or beginnings, (mostly terminations,) added to the principal part of the word, considered as standing in the relation of the root or basis; to that part of the word by which the principal part of the import of the compound is designated.

Take, for example, the cluster of conjugates, of which the Latin word *locus*, (the English, *place*,) forms the basis. Terminations or suffixes,—say, for example, locate, to locate, location, located, add locatedness and locatement. Beginnings or prefixes,—dislocate, add, upon the model of *replace*, relocate; add, upon the model of *transfer* and *transfuse*, translocate.

Of the import of all the several sorts of conjugates actually existing and imaginable, the basis is the import of the noun-substantive.

A noun-substantive is the name of some entity, real or fictitious.

By a real entity, understand a substance,—an object, the existence of which is made known to us by one or more of our five senses. A real entity is either a person or a thing, a substance rational, or a substance not rational.

By a fictitious entity, understand an object, the existence of which is feigned by the imagination,—feigned for the purpose of discourse, and which, when so formed, is spoken of as a real one.*

These sorts of fictitious entities may be classed in different ranks or orders, distinguished by their respective degrees of vicinity to the real one.

First comes motion,—fictitious entity of the first order. To speak of a motion, we are obliged to speak of it as if it were a substance. We say he or it is in motion; thus speaking, we speak of a motion as if it were a place, a portion of space, and the person or thing situated in that place.

The absence or negation of motion is rest; we say that person or thing is *at rest*:—speaking thus, we speak of rest as being a sort of substance; suppose a tree or a stone, and the person or the thing as being in a state of contiguity or relation to it.

Considered with reference to our senses, every particle of matter, perceived or perceptible at the *time* at which, or with reference to which it is considered, is either in a state of *motion* or in a state of *rest*.

The state of rest is the negation of the state of motion. With reference to the same object, no particle of matter can therefore be in motion and at rest at the same time. To say that it is or can be, would be a self-contradictory proposition, resolvable into a pair of mutually contradictory propositions.

But take any body composed of a number of particles of matter, then so it is that, of and in that same body, while part, *i. e.* some of those particles, are in a state of motion, other parts may at that time be in a state of rest.

When of any body it is said, that body has been in motion, what is meant is, that, at or in different portions of the field of time, that body has occupied different portions or positions in the field of space.

As atoms or minimum portions may be conceived as having place in the field of space, so may atoms or minimum portions in the field of time.

If speaking of any body, suppose the plaything called a peg-top. I say this body is now in motion; then, if by *now* I mean no more than a single atom or minimum portion of time, what I thus say cannot be exactly true, since, as above, for motion to have had place, or to have place, two atoms of time at the least are necessary.

But if, speaking as above, what I mean by *now* is a portion of the field of time, containing any number of atoms greater than one, then the proposition delivered by me in those same words may be true.

In general, the word *now*, when applied to motion, is understood as applicable with propriety. Why? Because, in the utterance of the proposition to that effect, atoms in great number are employed.†

* For a fuller explanation of this division of entities into real and fictitious, with the subdivisions, see the Tract on Ontology, supra, p. 195.

† In the above distinction in regard to *existence*, and thence *thought*, may be seen the necessary basis of the distinction of qualities into active and passive, and of verbs into transitive and intransitive.

Digitized by Google

Here, then, we have a division of the states of which things, *i. e.* portions of matter, are susceptible, and that division an exhaustive one; of states of things, and thence and therefore of the objects of thought, in so far as they come within that same denomination, viz. portions of matter.

States of things, when at rest, are their positions with reference to one another in the field of space.

States of things, when in motion, are motions.

Considered abstractedly from volition, a *motion* is termed an event; a simple motion, a simple event; a complex motion, a complex event.

Considered as the result of volition, a motion is termed *an act, an action*, an operation.

In the word position, we see already the name of one fictitious entity, and thereby, in so far as it can be said to be visible, one fictitious entity. In the word *motion* we see another.

Taking into consideration any body which we have been considering as having been in a state of motion, we thence take occasion to ascribe to it a *quality*, viz. *mobility*; the quality which consists in the capacity of being, or aptitude to be, put *into*, and thence to be *in*, a state of motion. Antecedent to our idea of this quality, mobility must have been our idea of the correspondent *state*, viz. a *state* of motion.

To substance we ascribe qualities; to motion also we ascribe qualities. It is by this circumstance, that of motion, the import is placed, as it were, nearer to that of substance than that of qualities. Substances have their qualities,—they are large, small, long, short, thick, thin, and so forth; motions have their qualities,—they are quick, slow, rising, falling, continued, discontinued, regular, irregular, and so on.

If, then, *motion* be termed a fictitious entity of the *first* order, viz. that which is nearest to reality, mobility, and so any other quality, may with reference to it be termed a fictitious entity of the *second* order.

Here, then, we have an additional class of fictitious entities,—of fictitious substances. We have largeness, smallness, length, shortness, thickness, thinness; we have, moreover, quickness, slowness. We might have as well as rising, risingness; as well as falling, fallingness; as well as continued, continuedness; as well as discontinued, discontinuedness; we have as well as regular, regularity; as well as irregular, irregularity; attributes as well of substances as of motions.

Already has been brought to view, though as yet without special notice, a different sort of conjugate, the noun-adjective,—large, small, long, short, thick, thin, and so forth.

This sort of conjugate, in what consists its difference from that which is the name of a quality? In this:—when we speak of largeness, there is largeness; we speak of the fictitious substance so denominated, without reference made to any other object. On the contrary, when we say large, we present the idea of that same quality, but accompanied with the intimation of some other substance which is endued with that quality,—some other object in which that quality has existence, and is to be found. We put the mind upon the look-out for that other object, without which it is satisfied that the expression is incomplete; that the idea presented by it is but, as it were, the fragment of an idea,—a fragment, to the completion of which the idea of some object in which the quality is to be found is necessary.

In a word, the *substantival name* of a quality presents the idea, in the character of a complete idea, conceivable of itself, the *adjectival denomination* of that same quality presents the idea in the character of an incomplete idea, requiring for the completion of it the idea of some object in which it may be seen to *inhere*.

In the order of invention, proper names come before common names. Common names are the result of generalization; every common name is the name of a general idea.

The pronoun *I* is a sort of common name, being applicable by any person as well as any other; the pronouns he, she, and it, more manifestly so. Languages, it is said, are in existence, in which there are no such pronominal names. Instead of *I*, the speaker employs his own name; instead of you, the name of the person spoken to; instead of he or she, that of the person spoken of. A different sign for the third person, when of a different sex, must have been a superior refinement; so likewise the difference between animals endued with the organs of sex, and other substances,—whence the distinction between masculine and feminine, on the one hand, and neuter on the other.

Among the articles, the definite article *the* must have come first into use. The use of the indefinite article *a* implies the existence of the habit of abstraction,—of generalization,—an advance made in the art of logic.

On the occasion in which the original sole part of speech, the interjection, began to be resolved into the eight which we distinguish at present, the noun-substantive was probably the first to make its appearance, and that in the nominative case and singular number.

Nouns-adjective, and verbs,—which came forth first? the adjective or the verb, it seems not at present very easy to determine. What is certain, is, that of the adjective the idea is altogether simple in comparison with that of the verb; but as above, simplicity, so far from being an evidence of priority, is rather an evidence to the contrary.

When once the verb-substantive was established, the greatest of all strides was made in the track of abstraction and generalization. Added to a correspondent set of adjectives, this one verb is capable of performing the office of all other verbs.

Digitized by Google

In the logical sense of the word conjugate every verb is a cluster or set of conjugates,—of conjugates bearing the same relation to each other. In the instance of every such aggregate, accordingly, to conjugate a verb, is, in the hitherto current language of grammarians, (for in this respect, in the language of logicians, there is a difference,)—to enumerate the several words which enter into the composition of the aggregate so denominated.

To see clearly into the nature of this aggregate, it will be necessary to take an inventory of the ideas, the signs of which enter into the composition of it.

Distinguish them, in the first place, into principal and accessory.*

Section III.

Irregular Nouns and Verbs are amongst those which are of most frequent use—why?

At an early period in the history of language, a word or sound of one sort was employed as a basis for one of the relations which are expressed by inflection, a word of another sort for another.

Fragments of the mass of language in the shape which it wore while in that imperfect state, are still to be seen, and that, it is believed, in every at present cultivated language.

These fragments may be seen in the composition of all those nouns and verbs which are regarded as being in any respect irregular, and which, on that account, are exhibited by grammarians in the character of irregular nouns and verbs.

By any person who will be at the trouble of reviewing them, these irregular parts of speech will, in every language, be found among those, for the import of which the demand is most frequent in its occurrence, and which, consequently, are in most general use. In the track of time the stage at which they first came into use, was that at which the number of words in use was not as yet sufficiently great for the labour attached to it, to have drawn men into the expedient of cultivating it by employing the principle and scheme of connexion for a multitude of mutually-related words, and thus substracting from the inconvenient multitude of different forms, with the import of which they would otherwise have had to make themselves acquainted. Such was the state of society,—such the state of the demand for discourse at the time when they first came into use. The demand never having diminished, thus it is that the actual use of them remains undiminished.

Thus it is that, of the history of language, no inconsiderable part remains to this day written upon the face of it.

* At this point the MSS. break off abruptly.—*Ed.*

Section IV.

Necessity of Names of Material Objects for the Designation of Pneumatic or Immaterial Objects.

All our psychological ideas are derived from physical ones,—all mental from corporeal ones. When spoken of, mental ideas are spoken of as if they were corporeal ones. In no other manner can they be spoken of. But thus to speak of them is to give an erroneous, a false account of them, an account that agrees not with their nature,—it is to misrepresent them. But very different from what it is in most other cases, in this case misrepresentation is not matter of blame. By it no deception is intended; if, to a certain degree, for want of sufficient explanation, misconception be the result of it, unless by accident, it is not among the results intended by him by whom the misrepresentation is made,—the false account is delivered. From what there is of falsehood not only is pure good the result, but it is the work of invincible necessity,—on no other terms can discourse be carried on.

Every noun-substantive is a name, a name either of an individual object, or of a sort or aggregate of objects. The name of an individual has, by all grammarians, been termed a *proper* name,—the name of a sort or aggregate of objects, a *common* name; it being applied in common to each one of the individual objects which are regarded as belonging to that sort—as possessing certain properties supposed to belong in common to them all.

By this name an existence is ascribed to the individual object, or sort of object, of which it is the name. In the case where to the object thus spoken of, existence is actually an object of one of the five senses, and in particular of the sense of touch or feeling,—the only one without which man cannot exist, say, in a word, where the object is a tangible one; here there is no fiction,—as this man, this beast, this bird, this fish, this star;—or this sort of man, this sort of beast, this sort of bird, this sort of fish, this sort of star,—the object spoken of may be termed a real entity On the other hand, in the case in which the object is not a tangible one, the object, the existence of which is thus asserted, not being a real existing one, the object, if it must be termed an entity, as on pain of universal and perpetual non-intercourse between man and man, it must be,—it may, for distinction's sake, be termed a fictitious entity. Take, for example, this motion, this operation, this quality, this obligation, this right. Thus then we have two sorts of names, with two corresponding sorts of entities. Names of real entities,—names of fictitious entities.

Unfortunate it is, howsoever necessary and indispensable, that for speaking of fictitious entities, there is no other possible mode than that of speaking of them as if they were so many real entities. This blameless falsehood

Digitized by Google

being universally uttered, and remaining universally uncontradicted, is, to a considerable extent, taken for truth. With every *name* employed, an entity stands associated in the minds of the hearers, as well as speakers, and that, entity, though in one half of the whole number of instances, no other than a fictitious one, is, in all of them, apt to be taken for a real one. To speak of an object by its name, its universally known name, is to ascribe existence to it,—out of this, error, misconception, obscurity, ambiguity, confusion, doubts, disagreement, angry passions, discord and hostility have, to no inconsiderable amount, had place. There is many a man who could not endure patiently to sit and hear contested the reality of those objects which he is in the habit of speaking of as being *his rights*. For the assertion of the existence of these fictitious objects, no small degree of merit has been ascribed, no small degree of praise has been given,—assertion has been taken for proof, and the stronger and more numerous the sets of words employed, the more complete and conclusive has that proof been esteemed.*

To such of the sources of perception as are of a material or corporeal nature, whether audible or visible, names are early attached;—by the presence of the object to both parties at once, the addresser and the addressee, *i. e.* party addressed, at the time that, by the addresser, the sign is presented to the sense of the addressee, the individuality of the object, the idea of which is, by that sign, presented to notice, is continually established. Bring hither that loaf;—behold that apple;—at the time when the sign is thus presented to sense, the thing signified,—the portion of matter thus denominated being at the same time presented to the senses of both parties, the import of the word loaf or apple is thus fixed, readily fixed, and beyond danger of mistake.

Objects of a corporeal nature may be designated and denominated in a direct way.

Not so in the case of an object of which the seat lies in the mind;—not so in the case of an immaterial being. For producing in any other mind any conception whatsoever of an object of this class, a man has absolutely but one means, and that is to speak of it as if it belonged to the other class,—to speak of it as if it were a material object,—to present to the party addressed some sign or other with the signification of which he is acquainted, in the character of a sign of some material object,—and upon the resemblance, or rather analogy, such as it is, which has place between the material object of which it was originally the sign, and the immaterial object of which it is now employed as a sign, to depend for the chance of the sign's exciting in his mind the idea which, on the occasion, it is endeavoured to excite, viz. the idea of the immaterial object.

In saying, bring me that loaf, it lies in that pan;—if a pan, with a loaf in it, were accordingly existing in the presence of us both,—I should raise up *in* your mind two ideas, that of a pan and that of a loaf. Correspondent to the portion of discourse having matter for its subject, here then is a portion of discourse having mind for its subject. By what means, then, is it, that by words employed for that purpose, I have succeeded in my endeavour to present to your own mind, the general, in conjunction with the particular, idea of something which I have caused to have place in it?

It is by causing you to consider your own mind under the image or similitude of a receptacle, in which the idea has been made to have place, *as* in the material pan the material loaf is deposited. And here, after having officiated in the *material* sense, the preposition *in*, a preposition significative of *place*, officiates in the *immaterial* sense; and it is by its material sense, that it receives its explanation when employed in its immaterial sense, for from no other source could it receive its explanation.

Applied to the designation of any class of material objects, a sign is, or may be, the sign of a *real entity*, applied to the purpose of designating any object of the class of immaterial objects, a sign cannot, in that respect, be the sign of anything but a fictitious entity. The entity of which the sign in question is given as a sign,—your mind, as in the above example, shall in the character of an immaterial substance, have whatsoever reality it may be your pleasure to see ascribed to it. But in the phrase in question, in virtue of the preposition *in*, it is in the character of a material substance that it is spoken of, a receptacle in which an idea may have place, as a loaf may in a pan; and in so far as *that* is the character in which it is spoken of, fiction is employed. So far, therefore, the name given to your mind is the name of a fictitious entity, and your mind itself a fictitious entity. If in the instance of your *mind* it be in any way displeasing to you to make this acknowledgment, take for the fictitious entity the idea spoken of as being lodged in it;—or if that be not agreeable, let it be your understanding, your will, your conception, your imagination, considered in the character of so many separated existences, capable of having objects lodged in them.

Of the origin of the import of the sign in some instances the materiality is, it is true, no longer visible. Take for example, as above, the word *mind* itself, and the word *will*. But in by far the greater number of instances, it is plain enough. Take for example the words understanding, conception, and imagination, as above. Even in regard to *mind*, though of that word the root, in material ideas, is lost; in the French word, the import of which, though it coincide not with it, comes nearest to it, viz. *esprit*, the materiality is plain enough.

* See a more minute exemplification in the author's criticism on the French Declaration of Rights, in vol. ii. p. 496, *et seq.*—*Ed.*

Digitized by Google

Correspondent to, and derived from, that French word, or from the Latin word *spiritus*, is our word, *spirit*, and that spirit means originally breath, *i. e.* air discharged out of the lungs, is sufficiently notorious.

In so far as any origin at all can be found for it, it is in a material import that the origin of the import of every word possessing an immaterial import is to be found. Seeing that in the numerous instances in which both sorts of imports are attached to the same word, this rule is verified, we can do no otherwise than conclude that originally such was also the case in the instance of the comparatively small number of words, in and for which no *material* import can at present be found.

Throughout the whole field of language, parallel to the line of what may be termed the material language, and expressed by the same words, runs a line of what may be termed the immaterial language. Not that to every word that has a material import there belongs also an immaterial one; but that to every word that has an immaterial import there belongs, or at least did belong, a material one.

In a word, our ideas coming, all of them, from our senses, from what other source can the signs of them—from what other source can our language come?

Of one and the same thought, from mind to mind, by what means—through what channel can *conveyance* be made? To no other man's is the *mind* of any man immediately present. Matter, this or that portion of matter external to both, in this may be seen the only channel, the only medium, which the nature of the case admits of. Yonder stands a certain portion of matter. By that portion of matter feelings of a certain sort are produced in your mind: by that same portion of matter feelings of a sort, if not exactly the same, at least, with reference to the purpose in question, near enough to being the same, are produced, at the same time, in my mind. Here, then, is the channel of communication, and the only one. Of that channel language takes possession and employs it.

Under yon tree, in that hollow on the ground, lies an apple;—in that same spot, while I am saying this to you, pointing, at the same time, to the spot, you are observing that same apple. By this means, along with the signification of the words, *lies*, *ground*, *hollow*, &c., you and I learn the signification of the word *in*.

At and during the time we are thus conversing, the *ideas* of the *apple*, the *ground*, and the *hollow*, are *in* both our minds. In this way it is, that we learn the import of this same word *in* with reference to our two *minds*. In a word, with reference to *mind* in general, by no other means could we have learned it. In no other way could the word *in*, add, or *any other word*, have acquired a signification with reference to *mind*.

Unless it be the one expressed by the proposition *of*, taken as the sign of the possessive case, the material image, and thence the immaterial idea expressed by the preposition *in*, is the one the exemplification of which occurs with the greatest frequency.

By this example, the derivation of the immaterial idea from the material image, and the use thence made of the noun, considered as the name of the immaterial idea, from the use made of the same word in the character of the name of the material image, being once explained to any one to whom the explanation thus given is clear and satisfactory; of the two senses thus attached to as many propositions as the particular language, whatsoever it be, happens to furnish, the explanation may henceforward be despatched in a short formulary, and at the expense of a comparatively small number of words.

Section V.

Subjects of Discourse, immediate and ulterior.

Language is the sign of thought, an instrument for the communication of thought from one mind to another.

Language is the sign of thought, of the thought which is in the mind of him by whom the discourse is uttered.

It may be the sign of other things and other objects in infinite variety, but of this object it is always a sign, and it is only through this that it becomes the sign of any other object.

On this occasion, and for this purpose, the whole of the mind of man may be considered as distinguishable into two parts,—the purely passive and the active. In the passive is included the intellectual; the active may also be styled the concupiscible. The passive, the seat of perception, memory, and judgment, in so far as it is capable (as in *seeing*) of being exercised without any consciousness of the intervention of the *will*: the active the seat of desire, and thence of volition, and thence of external action.

The object for the designation of which a class of words, termed by grammarians a verb in the imperative mood, is employed, is one example out of several modifications, of the state of which the concupiscible part of the mind is susceptible.

A certain event presented by my imagination as being not yet realized, but as capable of being realized, becomes the object of my desire; if the event be regarded as capable of being brought into reality by my own agency alone, and my desire of seeing it realized, is strong enough, my will, my volitional faculty, and, at the same time, the appropriate branch of my externally active faculty are concerned in the production of it.

If it be regarded as capable of being brought into reality by the active agency of some other individual, and not otherwise, at the same time that it appears to me probable that, by the knowledge of the desire entertained in my

Digitized by Google

mind a correspondent desire followed by corresponding action, will be produced in his, I address myself to him. I employ the faculty of language in making communication to him of such my desire accordingly.

In respect of power, regard being had to the particular occasion and purpose in question, what is his situation in life in relation and comparison to mine? Is it that, in my view of the matter, I have it in my power to exercise a greater influence on his wellbeing than he has on mine?—I am his superior. Is it that, on the one hand, the power which I have of exercising influence on his wellbeing, on the other hand, the power which he has of exercising influence on my wellbeing, are equal to one another?—He is my equal. Is it that the power which he has of exercising influence on my wellbeing is greater than that which I have of exercising influence on his wellbeing?—I am his inferior.

In the first case, if the mode in which I make communication of such my desire be such as to convey to him an intimation of the opinion I entertain of the position of such my own station in life with relation to his, the expression thus given to my desire is termed a command.

In Latin, *impero* means *I command;* imperation, commanding. Of the cluster of words, designated by grammarians by the name of a verb, one included cluster is termed as above, a verb in the *imperative* mood. By this name the intimation expressed is, that wherever a word of this form is employed, intimation of superiority is given, as above; that by it this sort of command is signified, and that commands are not signified by any other sort of word. But that neither of these propositions is correct will, in its place, be made manifest.

Thus far, then, are we advanced. The immediate subject of a communication made by language is always the state of the speaker's mind, the state of the *passive* or *receptive* part of it, or the state of the *active* or *concupiscible* part.

Now, then, in the case where it is the state of the receptive part, what is, or may be, the *ulterior* subject of the communication thus made?

Answer. It will be, in some respect or other, the state (viz. meaning the supposed or alleged state) either of the corporeal part of the speaker's frame or the state of some object other than, and exterior to, the speaker.

Of the corporeal part of the speaker's frame. Examples:—I am weary, I am hungry, I am dry.

Of the state of some object other than and exterior to the speaker. Examples:—That apple is ripe, apples are sweet, apples are good.

In both these cases, an object other than the state of my own mind is the subject of the discourse held by me, but in neither of them is it the immediate subject.

In both of them the immediate subject is no other than the state of my own mind,—an opinion entertained by me in relation to the ulterior object or subject.

In the one case it is an opinion of which the subject is the state of my own body.

In the other it is an opinion concerning the state of a body exterior to my own body.

In the first case, the opinion, though it be but an opinion, is not, as the case is here put, much in danger of being erroneous. In respect of the actual state of my sensations, meaning the sensations themselves, I am scarcely liable to be in an error. But beyond that point no sooner do I advance but a single step, if I undertake to pronounce an opinion relative to the cause of any of those sensations, from that moment I am liable to fall. I here launch into the ocean of art and science. I here commence physician; and, in the field of the physician the dominion of error is but too severely felt.

Speaking of the state of my own body, am I thus exposed to error?—Much more so am I in speaking of the state of any other.*

The sort of infirmity just noticed being common to all discourse, in the composition of which an assertion of the state of the speaker's mind intervenes, precedes, introduces, and weakens the ulterior assertion which lies beyond it, the consideration of the intervening assertion may, in every case but the present (in which, for the purpose of explanation, it has been necessary thus, for once, to bring it to view) be dropped, and the subject of the discourse may be stated as being, except in the particular case where it is the state of the speaker's body, the state of some exterior *entity* or assemblage of entities.

But now already comes the stage at which it will become necessary to launch into the track of fiction, at which, by an irresistible voice, and on pain of leaving everything unexplained and misconceived, the land of fiction calls upon us to visit it.

That apple is ripe. Apples are sweet. Apples are good. An apple is a real entity; in saying that apple exists,—the existence of which, I express my opinion, is a real entity. But *that apple is ripe;* of what is it that, in addition to that of the apple, I express my opinion of the existence? It is of the existence of the quality of ripeness in the apple.

But the quality of ripeness, is it a real entity? Different from apples, and everything else that is susceptible of it, has this quality, or any quality, any separate existence? If there were no other apple in the world than that which I have in my hand, this apple would not the less be possessed of existence; but if

* From these speculative observations practical inferences of no small importance might be deduced.

1. Avoid dogmativeness. 2. Still more avoid intolerance. In both cases never cease to bear in mind how slippery and hollow the ground on which your opinion, and consequently the utmost value of any expression which you can give to it, rests.

Digitized by Google

there were nothing in the world that were susceptible of being ripe, where would be the quality of ripeness? Nowhere.

In saying this apple is ripe, what is it that I affirm? It is, that *in* this apple is the quality of ripeness. The two expressions are equivalent. But,—in this apple is the quality of ripeness, in the assertion thus made, what is the image that I bring to view? It is, that the apple is a receptacle; and that, in this receptacle, the quality of ripeness, the imaginary, the fictitious entity called a *quality* is lodged. For, of the preposition *in* this is the import. Witness the apple which I am supposing myself to have in my hand; witness the pen which, at this moment, I actually have in hand.

Thus it is that, in the use made of language, fiction, at the very first step that can be taken in the field of language, fiction, in the simplest, or almost the simplest case, in which language can be employed, becomes a necessary resource.

Coeval with the very first steps that can be taken in the endeavour to give a clear explanation of the nature of language, must be the intimation given of the distinction between real and fictitious entities, and the correspondent distinction between names of real and names of fictitious entities.

Though to the development, and thus to the explanation of the import of the word *ripe*, the word *ripeness* may thus be rendered subservient, it follows not that of the two the word ripeness was first in use. From the use which,—in and for the developing the texture of the import of the verb,—of the word quality, in the character of a generic name, and of the names of the several sorts of qualities distinguishable in the several sorts of substances in the character of so many specific names, may now be made, it follows not that words of this description were in use before the verb,—before that complex species of verb, in every individual of which the import of some species of quality may be found contained. On the contrary, the contrary course seems even by much the most natural and probable to have taken place.

In the earlier stages of society, all conceptions, and, consequently, all expressions, were generally indistinct; it is only by long-continued courses of attention that distinctness in conception and expression have been produced.

It seems probable that it was in the shape of entire propositions that the sounds of which audible language was composed, first presented themselves; witness those words which, under the name of *interjections*, are by grammarians numbered among the parts of speech, and which may be considered as so many fragments of language, as it showed itself in its earliest state.

As it was with the audible, so it appears to have been with the visible signs of language; and as words were formed by the decomposition of propositions, so were letters by the decomposition of words.

If all language be thus figurative, how then, (it may be asked,) how then is it that the character, and, in so important a class of instances the reproach, of figurativeness, is cast upon the use made of it in particular instances?

To this it may be answered,—The discourse that, in this particular sense, is *not* figurative, is the discourse in which, for the conveyance of the immaterial part of the stock of ideas conveyed, no other fictions,—no other figures are employed than what are absolutely necessary to, and which, consequently, are universally employed in, the conveyance of the import intended to be conveyed.

When a discourse is figurative, in lieu of those, or in addition to those, other images not necessary to, and thence not universally employed in the conveyance of the import in question, are employed.

In some instances, by the figures, by the images thus without necessity employed, it happens that, in the mind of the hearer or speaker, a sense of pleasure is produced: in this case, according to the nature of the subject, and according as the use of them is or is not conjoined with the use of *metre*, they constitute the matter of poetry or rhetoric, and are regarded as ornamental.

In other instances, the sensation of which they are productive, is that of disgust. The case in which this happens is where the resemblance between the material image employed as a sign, and the immaterial object meant to be signified, is too faint, the distance too wide, or where, in such a proportion as to be fatiguing for the designation of one and the same object, a multitude of images, one upon the back of another, are heaped up.

Not unfrequently when, for the designation of the immaterial idea meant to be designated, a man has chosen and employed a material image, not very closely analogous to it, that image brings to view and gives expression to a second, that second to a third, and so on, not one of them perhaps very closely analogous to the one by which it was immediately suggested. What adds to the confusion, a quality which belongs only to one of these images considered in the character of a subject, is inadvertently ascribed to another. In this way, perhaps, before the discourse is come to a close, the immaterial object, or state of things originally meant to be designated, has been forgotten, and is dropt out of sight; and thus the whole becomes a tissue of nonsense.

Of imperfection, in this shape, the most conspicuous examples may be found generally, not to say universally, in the works of oriental writers.

Section VI.

Relation as between Archetype and Type, with their respective Synonyms and Modifications.

When any two psychical real entities, any

Digitized by Google

two ideas, whether perceptions, remembrances, or factitious mental images, have, either at the same instant, or at two contiguous, or nearly contiguous, instants, been present to the mind, —each of them, such is the effect of this conjunction, howsoever transient, acquirês, in the event of its reappearance, a tendency to draw forth and introduce the other; and the more frequently the conjunct appearance is repeated, the more apt, *cæteris paribus*, is this tendency, or probability, to ripen into actuality.

This tendency is equal and mutual; and, forasmuch as when considered in this most simple point of view, the two objects thus associated present not any points of difference by which either can be distinguished from the other, they are not, while considered in this point of view and no other, susceptible of different names.

When, in respect of order of time, any difference between the two has place, in this difference may be found (it might be supposed) matter sufficient to serve as the ground for the formation of a difference in respect of name. But innumerable are the instances in which no difference in point of *time* can be found to have place; and even when a difference of this sort might, perhaps, be observable, to such a degree is it fugitive and questionable, as to be altogether incapable of affording any permanent and sufficient practical ground for a permanent difference in respect of name.

At the same time, so it is, that for the two ideas in a pair of ideas thus associated, two different names, and those employed throughout a large portion of the field of thought, have been provided.

To the possibility of putting to any kind of use this difference in respect of name, some difference in respect of nature was an indispensable requisite. Of this necessary difference, a source was found in the order of *importance*. For designating the object regarded as superior in the scale of importance, the word archetype, or thing signified, was employed; for the other, the words *sign* and *type*.

In so far as any importance is considered as belonging to both, and if to both, in so far as any difference is considered as having place in their respective degrees of relative importance, that to which the highest degree is ascribed will be considered and spoken of as the archetype, or thing signified; that to which no more than an inferior degree of importance, or what is, perhaps, more common, no importance at all is regarded as belonging, will be spoken of as the type or sign.

If, while importance is considered as belonging to both, no difference of level is considered as having place between their respective situations in the scale of importance, either may be considered as possessing the character of archetype, or thing signified in relation to the other, which, in that case, will be considered as operating in the character of type,—performing the function of type or sign.

In so far as no degree of importance is regarded as belonging to either of them, no source of denomination can, in that case, be found for either of them,—neither of them presenting any pretension to the character of archetype, neither of them is capable of being designated by any such denomination as that of *type*.

The condition requisite to the establishment of this conjunction being so extremely simple, and such as in the nature of things, cannot but be of continually repeated occurrence, design, human design, cannot but have been necessary to the exemplification of it.

But if, even without design, *i. e.* an exertion of the will applying itself to that purpose, it be capable of taking place, much more is it with and by design.

Of the production of this effect by design, language, in all its various forms, is the most extensive exemplification,—within the field of its operation, almost all other exemplifications are included.

In the case of language taken in the aggregate, the aggregate, composed of ideas or other psychical entities, capable of being expressed by language, being considered as constituting the aggregate archetype or thing signified; the aggregate of the sounds employed for that purpose, constitute, with reference to it, the aggregate type or sign; this aggregate type or sign being considered as the archetype. the aggregate of the images which, under the name of *letters*, are employed for the designation of those sounds, constitutes with reference to the aggregate of those same sounds, the aggregate type or sign.

Symbol, index, indication, token, badge, the ideas attached respectively to these words, are so many modifications of the idea attached to the word sign.

Though in the nature of the case as above, no object of perception be incapable of being in the character of type or sign, made to serve for bringing to the mind's view any other, yet, by reason of their natural permanence, or capacity for permanence, the signs most naturally and frequently applied to this purpose are of the *visible class*.

So extensive, and considered in its totality, so adequate to the purpose of designation, is the collection of signs of which language is composed, that any other sign or lesser aggregate of signs, to which, on any occasion it happens, to be applied to any part of the same purpose, is considered in no other light than that of a substitute to that supremely useful instrument.

Symbol, token, badge,—in these words may be seen so many names of signs of a particular description, employed on some particular occasion, with or without advantage in the character of substitutes to that universally and constantly fit and useful instrument.

Of the above three words, *symbol* and *token* are not incapable of being employed for the designation of any class of objects, considered

Digitized by Google

as employed in the character of *signs*. Of the word *badge*, the applicability seems confined to such signs as consist of visible images.

Section VII.

Of Propositions.

Every word* to be made intelligible, must be represented as part of some assertion or proposition.

Every sentence is either an assertion, or a combination of assertions.

To be subservient to any use or purpose, every assignable portion of language must, on each occasion, be enunciative or suggestive of at least some proposition. This proposition will consist of one word only, or of divers words,—will be either *monoepic* or *polyepic;* when it is polyepic, the proposition has several words for its component elements.

A proposition is either simple or composite. Every composite proposition is resolvable into a number of simple ones.

Every monoepic proposition has, for its equivalent, a polyepic one, of which it is the abridged expression. Examples of monoepic propositions are the several conjugates, (the infinitive mood excepted,) which are usually contained in what is called a *verb*,—one and the same verb.

A simple proposition is either, 1. physical; 2. psychological; or, 3. compounded of the two.

Every psychological proposition has, for its archetype, a physical proposition; physical are therefore the propositions, the mention of which requires to precede that of the other.

By every single physical proposition, the subject of it is stated either as being in a state of rest, or in a state of motion.

In every simple physical proposition, if complete, are contained a word designative of the subject of the proposition, a word designative of the predicate of the proposition,† and a word designative of the copula,‡ or bond of connexion between the two, a word by which the operation called *predication* is performed.

This copula is either affirmative or negative; by the copula, if affirmative, the subject is averred to be in some state for the description of which the predicate is employed.

The portion of language employed for giving expression to a proposition may be either—1, exactly adequate or commensurate; 2, superabundant; or, 3, deficient.

It is exactly adequate, or commensurate, when, for the designation of each member, one word, and no more, is employed.

It is deficient in so far as the name of any one of the members being omitted, the import belonging to it is left to be inferred, viz. from the context, *i. e.* from such parts of the whole discourse of which the signs are inserted.

It is redundant, or superabundant, in proportion as, in lieu of the designation of any one or more of the members, words more than one are employed.§

Propositions may be distinguished, in the first place, into purely real, purely verbal, semi-real, or ambiguous.

A purely real proposition is either intellectual, *i. e.* state of the intellect expressing, or volitional, *i. e.* state of the will expressing.

In propositions of the intellectual cast or kind, the name of the subject may be the name either of a real entity or of a fictitious entity; so also the name of the attribute or predicate may be either the name of a real or the name of a fictitious entity.

Every simple proposition comes,—or without violence, and in respect of unity and simplicity, with considerable use, may be made to come, under this description, viz. a mass of discourse by which the assertion conveyed is to this effect, viz. that *in* the subject of which the name is contained or implied in it, a *property*, or quality,‖ of which the name is contained or implied in it, has had, has, or will absolutely or eventually have, existence.

Every proposition predicates the existence, past, present, or future, (*i. e.* future certain, or future contingent,) of some *state of things*, which is either motional or quiescent. A motional state of things is an *event*.

To predicate, for instance, the existence of a *quality* in a subject, is to predicate the existence, viz. past, present, or future, certain or contingent of the *events* which are the manifestations of that quality.

---

* Words are the signs of ideas. To render a word understood, is to point out the idea of which it is a sign. Combinations of words form assertions.

† The predicate is always the name,—may at least be considered in every case as the name of a quality.

‡ So called, in as much as it operates as a bond of connexion to such other parts of speech as it may happen to the other parts of the proposition to contain.

§ In this case the redundancy is but relative; relation being had to the least number necessary and sufficient for the formation of a proposition in any case, since in many instances for the giving expression to the import meant to be expressed, words in considerable numbers beyond those in question just mentioned, will, in many, and indeed most, instances commonly be necessary.

‖ A quality is a fictitious entity, *i. e.* every name of a quality is the name of a fictitious entity. The quality thus expressed, may be either momentary or permanent,—momentary, *i. e.* not meant to be represented as having existence in the subject in question for any portion of time, other than the individual portion which the other words are employed to designate; permanent, when the property is considered as habitually resident in the subject in question, no length of time being marked out as that beyond which, on the occasion in question, the quality is not considered as residing in that same subject.

Digitized by Google

A proposition containing the name of a fictitious entity, predicates indirectly, (as if a real event were predicated of a real entity,) some event as if it were real, concerning the fictitious entity, at the same time the event being referred to an entity which is not real, cannot itself be real; and this is done by means of a distant and fanciful analogy which there is between the event *typified* and the real event made use of for typification.

Abstract entities can no otherwise be expressed than by fiction. Thus a billiard-ball is said to be *in* motion; or motion *in* a billiard-ball; or two billiard-balls *in* a situation.

Two objects, two billiard-balls considered in successive moments, have been either at different distances from one another or at the same distance: in the first case they are in motion, in the second case they are at rest.

Motion can no otherwise be defined than by diversity of distance: the portion of matter interposed between them being at one time of one length, at another time of another. Diversity of distances are judged of by a comparison which is simultaneous; one moment I can place no more than one piece of wood of an inch long between the two balls, the next moment I can place two such pieces.

Words cannot, in a direct manner, represent any other events than what are *quiescent*. Motion they cannot represent. It is with language in this respect as it is with painting.

In all propositions composed of or concerning fictitious and abstract entities, there are two events concerned, 1. The real event typified; 2. The fictitious event, which is the archetype.*

The proposition which announces the event typified may be termed the *plain* or *unfigurative* proposition, the other the *figurative* proposition.

A proposition is really significative, in so far as the import of the subject, and that of the attribute, not being precisely the same, the attribute is represented by the proposition as bearing this or that relation to the subject. Examples,—man is rational, apples are nourishing.

A proposition is no more than verbally significative, in so far as without relation had to the nature of the entity signified by the subject, this or that relation is represented as having place between their names. Examples: A wight is a man; a miser covets wealth; a rapier is a sword.

A proposition is both really and verbally significative in so far as by the names given to the subject, and the attribute, respectively, the nature of both or either of them, is meant to be brought to view. Example:—Wood anemonies are plants; sea anemonies are animals.

Of all propositions by which a minor genus is spoken of as being contained in a major genus, the import may be considered as being of this mixed kind.

* See sect. v., p. 330.

In propositions of which the subject is a fictitious entity, the subject and predicate, the verb and noun which use has conjoined must be kept conjoined. A new combination appears an impropriety, at least a novelty, as much almost as the use of a new term. You may say strain a point, or stretch a point; you cannot say extend a point, nor strain nor stretch a line or a buckle.†

A complex proposition is that which has at least two subjects, with a predicate and copula to each of them, two subjects, and as many predicates and copulas. The general effect of it is to bring to view two entities, each of them real or fictitious, accompanied with an intimation that by one of them a change is produced in the state or condition of the other.

Considered in this point of view, a complex proposition may be termed a *transition-expressing* proposition. Examples:—1. Eurybiades struck Themistocles. 2. Themistocles was stricken by Eurybiades.

In both these instances the result expressed is one and the same; but in the one instance the verb employed is in what is called the active voice; in the other, in the passive.

In both instances a change in the state of a certain entity is represented as produced, and a *motion* is presented in the character of a cause of that change.

But in the first instance, the entity brought to view is the entity in which the motion is represented as having had its commencement, the entity which is represented as having been first in motion, and with that same entity the motion so produced by it. In the other instance it is the entity in which the motion is represented as having had its termination. Themistocles was struck, viz. by Eurybiades.

This motion may be considered as the manifestation of a correspondent quality on the subject, viz. an active quality, an active quality which is represented as having, on the occasion in question, at the moment in question, been resident in one of the two subjects in question, viz. Eurybiades.

In the other instance, the being struck may be considered as the manifestation of a correspondent quality of the passive kind, which is represented as having been on that same occasion, at that same moment, resident in the other of the two subjects in question, viz. Themistocles.‡

† Strain a point seems to have taken rise when breeches were trussed and untrussed by points.

‡ Here may be seen the origin and explanation of two species of verb. The verb active and the verb passive, or (to speak in the language of the past and present race of grammarians, by whom an ample cluster of words are spoken of as if they were all together but one word, to which real aggregate and supposed, imaginary unit, they give the name of a verb, *i. e.* one verb) the active *voice* and the *passive* voice of the verb.

A verb active is a verb, *i. e.* an aggregate of words in and by which to the import of the copula or verb-

Digitized by Google

Section VIII.

Of the Subject of a Proposition.

The name of the subject of a proposition is either singularly designative, or plurally designative: it is singularly designative when no more than one individual is meant to be designated; plurally when individuals more than one.

A singularly designative name is either determinately or indeterminately significative; determinately where the individual meant to be designated is distinguished from all others, as in the case of the proper name of a man, a field, a street, a lane, &c.; indefinite or indeterminate when the import of the pronoun adjective, *some* or *any* is considered as attached to it.

A plurally designative name is the name of an aggregate or number of individuals, considered as if collected together.

These individuals are either all determinate, all indeterminate, or some determinate, others indeterminate.

1. All determinate, for instance the members of one official *board* actually in existence.

2. All indeterminate, for instance the intended members of an official board, not in existence, but in contemplation to be established.

3. Some determinate, some indeterminate, of this sort, are the names of all *species* and *genera* of things; of aggregate objects which have, have had, or will have, a real existence; for in and by every such specific or generic name are designated, in the first place, all the individuals which are considered as being at the time in question endowed with the specific quality indicated by the name. In the next place, all that ever were. In the last place, all which ever will be, and by the supposition these last neither *have* nor ever have had existence.

A specific name partakes, therefore, at once, of the nature of the name of a real entity, and of a name of a fictitious entity. It is the name of a real entity considered as applied to any one of the individuals now or before now in existence, which were endowed with the specific property, or to the whole number of them, or to any part of the whole number of them put together. It is as yet the name of a fictitious entity, considered as applied to all or any one or more of those individuals, which, with that same specific character belonging to them, are considered as about to come into existence.

In this it differs from the name of a quality, for a quality is an object altogether fictitious, an object which, considered as distinct from the subject in which it is spoken of as *inhering*, neither has, nor has had, nor ever will have existence; for as often as it is spoken of as if it were *in* a body, *i. e.* a tangible substance, or in some other object which is spoken of as if it were a body, it is spoken of as if it were a substance, a tangible substance, which, by the supposition, it is not.

Section IX.

Of Predication.

In the character of a *subject*, an entity, real or fictitious, being brought to view, if by any phrase, intimation is given, that in that subject a certain *quality* thereby designated has place, *predication* is performed: the quality, in respect of its being so asserted to have place in the subject, is styled the predicate; and the sign by which the *assertion*, the act of assertion to the effect in question is expressed, is termed the *copula*.

In this explanation a proposition implied is, that predication may, in every case, be reduced to this: an attribution of a quality to a subject; to the entity which is the subject of the proposition of which the predicate in question is the predicate. The import of the word quality being already explained as not to be confined to the case in which the existence of it is considered as *permanent*.

Property, relation, place, time, manners, by the one word *quality* can the import of all these terms be with propriety said to be included? Answer—yes.

1. *Property.*—This may be considered as being perfectly synonymous to the word *quality*, and therefore in any case in which the use of the word quality might on any account be less convenient, may without any difference of import, be employed as a substitute for it.

2. *Relation.* For explaining the import of divers parts of speech, this word will, of necessity, come to be employed. But the bearing this or that relation to this or that other object may, without impropriety, be numbered among the qualities or properties of any object.

3. Of the modification of which *place*, i. e. *space*, considered in a relative point of view, is susceptible, frequent occasion for making mention will present itself. But the having its existence *in* the *place* in question may, for so long as it continues, be, with as much propriety, in this instance as in any other, numbered among the *properties* or *qualities* of the object, whatsoever it may be.

4. So, in regard to *time*. Amongst the *qualities* attributed to this subject in question, may be the having its existence in a certain portion of the field of *time*.

---

substantive is added that of an active quality, as having been manifested by the subject in question. In this case the subject in question is the subject in which the motion is considered as having had its commencement.

A verb passive is a verb in which to the import of the same copula or verb-substantive, is added that of the correspondent passive quality, as having been manifested by the subject in question. In this case the subject in question is the subject in which the motion in question is considered as having received its termination.

Digitized by Google

Every object that exists, exists in some portion or other of the field of place or space.

Every object that exists, exists in some portion or other of the field of time.

In so far as it exists in the field of *space*, an object bears a certain *relation* to every other object considered as having its existence in that field.

In so far as it exists in the field of *time*, an object bears, in like manner, a certain relation to every other object considered as having its existence in that same field—the field of time.

And thus we have the *relations of place* and *time*, which, with the addition of *quality*, in the less extended sense of the word, (viz. that in which it is put for qualities other than those which consist in existence in certain portions of the field of place and time) constitute some of the principal classes of the objects, for the designation of which the different classes of words called parts of speech are employed.

As it requires an entire proposition to give complete expression—expression at length, to an intimation, that, to the subject in question, a certain property or quality belongs, so does it to give the like expression to an intimation, that, of the subject in question, the existence is confined to a certain portion of the field of space, or to a certain portion of the field of time.

In this way it will appear, that not only, in an adverb such as—*here*, *there*, *now*, *then*, the import of an entire proposition is contained; but even that in a mere preposition such as *of*, *under*, the import of an entire proposition is contained; and that, accordingly, whenever, over and above the preposition *is*, the import of which is included in every *proposition*, (or every form of words by which a quality is asserted to be *in* a subject,) any other preposition is included in the proposition, that proposition is a complete one, containing, in addition to whatsoever other simple propositions it may contain, one of which the preposition in question is the abridged equivalent and substitute.

Predication is either real or verbal;—real, when the design of the proposition is to convey information concerning the nature of the object signified,—when it declares the existence of some quality, in the subject named;—of real predication, nothing can be the object or matter but a quality:* verbal, when the design is merely to give intimation of the import of the word which, on the occasion in question, is employed in the character of a sign, as an oak is a plant, a dog is an animal.

Different as they are in themselves, that is, in the design in pursuance of which they are employed, these two modes of predication are very liable to be confounded.

When the predication is *real*, the purpose of it, the purpose of the proposition in which it has place, is always as above, to convey an intimation that, in the entity in question which, or the name of which, is the *subject* of the proposition in question, a certain quality to which expression is given in and by the Predicate, has existence.

When the predication is *verbal*, purely verbal, the design is not to give intimation of any quality as having existence in any subject, but merely to convey an intimation of a certain relation between the import of one word and the import of another, no such object as the nature of the quality designated by either, being on that occasion meant to be brought into view.†

The reason for holding up to view this distinction is, that sometimes, when the effect or design of the preposition is of one sort, it is liable to be misconceived, by being conceived to be of the other sort.

Section X.

Of Collections of Signs, i. e. *Propositions expressive of some State of the Perceptive Faculty, considered as having for the Source of the Perception a corporeal Object or Objects.*

Correspondent to such as are the *objects* to be designated, such must be the *signs* by which they are designated.

Correspondent to the states, and such as are the modifications, of which corporeal objects are susceptible, such must be the modifications of the signs which, under the name of *language* or *discourse*, are employed in the designation of them.

Every proposition by which any portion of matter is brought to view—is presented to the mind, has for its subject either some material body, some portion of a body, or some collection of bodies, or portions of bodies.

The sign or portion of language by which any such modification or modifications of matter are presented to the mind, is termed a *name*, a *denomination*, an *appellation*, the appellative.

By any such name, what is designated is either a simple body, a part of a single body, or an aggregate of bodies, or of parts of single bodies.

If a part of a body be spoken of by itself, it is in so far considered as a whole.

If it be a single body, the mode in which that body is spoken of is either *determinate* or *indeterminate*; if determinate, the name is styled a *proper* name; if it be an aggregate of bodies, it is styled a *common* name.

If the individuals designated by such common name be all determinate, it is, or may be styled a collective name;—in so far as any of them are indeterminate, a general or specific name.

* A quality being but a fictitious entity, the predicate, if the predication be real, can never be anything but the name of a fictitious entity.

† See this distinction exemplified above, p. 334. —*Ed.*

Digitized by Google

If, being a single body it be indeterminate, it has for its denomination a common name, whether *collective* or *generic*, being the name of the aggregate of which it is considered as an *unit*, coupled with a species of sign denominated a pronoun-adjective of which by and by.

During any given length of time every material object, capable of being taken for the *subject* of a *proposition*, in fact, has been either in motion or at rest. But when it is in motion it may be considered as capable of being at rest, and, when at rest, as capable of being in motion.

Every proposition has either one subject alone, or more than one; it being understood that under the description of one subject is here comprehended that which has for its sign a common name, whether collective or generic, (*i. e.* logically comprehensive,) or that of which a proper name is the appellative.

A proposition, if but one subject be designated in it, may be termed a single proposition; if two, double; if more than two, complex.

As everything which can happen to a corporeal subject is resolvable into this, viz. the having been, during the length of time in question, either in a state of motion or in a state of rest, so everything that can be said of, said to have happened to, that same corporeal subject, is resolvable either into this; viz. that during the length of time in question it has been, or has been capable of being in a state of *motion*; or into this, viz. that it has been, or has been capable of being in a state of *rest*.*

In either case, by what is said of the corporeal subject in question, a quality may be said to be ascribed to it, to be attributed to it, to be said to belong to it,—it may be said to be possessed of, endued, endowed with that same quality;—the quality is spoken of as being in that same subject, belonging to, appertaining to, inherent in that same subject.

If, in speaking of the quality as being in the subject, no more than a single point of time is brought to view, the quality thus attributed may be styled *actual*, or *momentary*, or transient;—if it be considered as either being, or capable of being, in the subject for an indeterminate length of time, the quality may be styled potential, habitual, or permanent.

When a quality is spoken of as appertaining to this or that subject, that which, on this occasion, is most frequently meant to be designated, and is, therefore, most apt to be brought to view, is an habitual or permanent quality.

In consideration of its being attributed to a subject, a quality is also frequently styled an *attribute*—an attribute of that same subject; and, in consideration of its belonging to a subject, it is also frequently styled a *property*—a property of, or belonging, or appertaining to, or inherent in, that same subject.

Suppose, then, a portion of the matter of language so constructed as to present to view a quality, whether actual or habitual, as appertaining to this or that given corporeal subject, let it be considered what are the objects of which this portion of the matter of language must have contained the signs.

These are, 1. The subject; 2. The quality. But to say that the quality in question is *in* the subject in question, is to affirm the existence of a certain relation between that subject and that quality, viz. the sort of relation of which the word *in* is the sign.

Thus, then, to the sign of the subject and the sign of the quality must be added the sign of the relation.

But what is thus said, what is thus affirmed, is, that in the subject in question the quality in question *is*; in other words, that *between* the subject and this quality there *exists* the relation in question.

Thus, then, to complete the texture of the proposition, to the sign of the subject, the sign of the *quality*, and the sign of the *relation*, must be added the sign of existence,—the sign by which existence is brought to view—the sign by which existence is asserted to have, or to have had place, viz. the existence of the relation between the subject and the attribute.

For the present, viz. to aid conception, and to afford a mark of distinction whereby this minimum proposition, and a proposition of larger dimensions and a greater number of parts, may be distinguished, let the following examples serve:—

Apples, say, are sweet, or, to keep clear of certain causes of complication, say, rather, sugar is sweet.

The number of words employed is here no more than *three*; but, in the form of expression, an abbreviation may be observed. Sweetness (the quality of sweetness) is in sugar. Sugar, the name of the subject—a corporeal subject: sweetness, the name of the quality; the quality consisting in the aptitude, in consequence of the necessary actions to produce in the *sensorium* of men the perception termed by the same name.

Section XI.

Aristotelian Logicians—Imperfection of their Conceptions in relation to Propositions.

For the formation of a proposition it has been seen that no fewer than four objects require to be brought to view,—objects all of them distinct, and, for the designation of each of them, a distinct sign capable of being, and in use to be employed.

What has, moreover, been seen is, that, for the formation of a complete proposition, though it be but a single proposition, the number of

* Sight, hearing, smell, present no exceptions. In case of sight, the object said to be seen, may be at rest, but the light, but for which it would not have been seen, has been in motion; and so in the instances of *hearing* and smell; in hearing, the air,—in smell, the odoriferous particles.

Digitized by Google

objects brought to view cannot be smaller than as above.

True it is, that, for the bringing to view this number of distinct and altogether different objects, a smaller number of words, and, in truth, even a single word, may be, and often has been, made to serve and to suffice. But how? Only because, in virtue of certain established associations, by this one word, the whole number of the above-mentioned distinct and different objects have been brought to view.

Not so the Aristotelians. Constituent parts of a proposition, according to Aristotle himself, no more than two,* viz. the subject and the predicate: name of the subject a noun—name of the predicate a verb.

Seeing that out of the two, and no more than two, distinguishable parts no proposition could be formed, no attribute spoken of, as belonging to any subject, the followers of Aristotle one and all, added a third, viz. the sign of existence to which they gave the name of a copula, though in this, according to Sanderson, they departed from the truth of the case. Why? Because they departed from the conceptions expressed, from the language used, by Aristotle.

But the relation between the subject and the attribute, the relation of which the existence between this subject and the attribute was to be affirmed, even after the above addition, what name had they found for it?—what observation had they made of it? *Answer:* None.

As in *Anatomy* so in Logic, by a continued and varied course of attention bestowed by a succession of observers, new organs have, from time to time, been discovered.

For the formation of a proposition, taken too in its least dimensions, according to Aristotle, no more than *two*, according to his observers, no more than *three*, parts, necessary; whereas, this minimum number, it has been seen, is no less than *four*. And, in their view of the matter, this number sufficient for another sort of proposition, which remains to be brought to view, and which, when analyzed, will be found to contain twice the number of parts contained in the only sort of proposition as yet brought to view.†

Term, it must be acknowledged, is the Latin-sprung word corresponding to the word employed by Aristotle. *Terme*—no more than two; and so, by his followers, *terms* no more than *three*. But, by terms, he and they must have meant component or constituent parts; for that was the thing which required to be brought to view. If, by the name of term, there were any parts that were not designated, then, by some other name such other parts should have been brought to view.

According to Sanderson, the copula, says Aristotle, is neither a term nor so much as a part of a proposition;—it is no more than a syncategorema. And what, according to him, is a syncategorema? It is a part of the predicate which, according to him, is itself a part of a proposition, the subject being the other. A part of that which is a part of the whole, and yet not a part of the whole! What self-contradiction!—what confusion!—what trifling!—what torment to the student! who, by the law of authority, stands bound to find it all true and incomprehensible!

* Sanderson, lib. ii. cap. i. p. 55.

† Here, and at the commencement of p. 337, there are references to which no corresponding elucidations have been found. From these and other pretty obvious irregularities, it will easily be perceived that the author had left this portion of his MSS. in a fragmentary state.—*Ed.*

Digitized by Google

FRAGMENTS

ON

UNIVERSAL GRAMMAR;

NOW FIRST PUBLISHED, FROM THE MANUSCRIPTS

OF

JEREMY BENTHAM.

⁂ With reference to the MSS. from which these Fragments are edited, see the Editorial Notices to the works on Logic and Language, pp. 214, 294.

Digitized by Google

CONTENTS.

	Page
INTRODUCTION	341
CHAPTER I. Definitions	343
II. Uses of Universal Grammar	344
III. Of the Parts of Speech	ib.
IV. Of the Noun-Substantive:	
Section 1. A Noun-Substantive—What?	345
2. Of Case	ib.
3. Of Gender	346
4. Of Number	347
V. Of the Adjective	ib.
VI. Of Pronouns	348
VII. Of Verbs:	
Section 1. A Verb—What?	ib.
2. Of Person	349
3. Of Number	ib.
4. Of Tenses, or designations of Time	ib.
5. Of proper Moods, or Moods properly so called	353
6. Of improper Moods, or Moods improperly so called	ib.
7. Of Voice	355
8. Of the Participle	ib.
VIII. Of Government and Concord	ib.
IX. Of Prepositions, Adverbs, and Conjunctions	356
Section 1. Their Connexion	ib.
2. Of Prepositions	ib.
3. Of Adverbs	ib.
4. Of Conjunctions	357
X. Of Interjections	ib.

Digitized by Google

UNIVERSAL GRAMMAR.

INTRODUCTION.

You to whom, in comparison with the whole number of existing languages, but a very small number, at the utmost, of this whole can be, in any degree, known,—on what ground is it that you can undertake to give an account of Universal Grammar; that is, of the Grammar of all languages whatsoever?

Answer,—In a great degree, in respect of the character and mutual relations of the parts of speech—viz. of those classes of words of which language is everywhere composed,—the articles of which the subject of grammar is composed, as to which all languages cannot but agree: the demand, in that respect, being everywhere, to a certain degree, the same, the nature of the supply cannot fail also to be everywhere, in a great degree, the same.

When, in relation to these points of necessary and universal agreement, the connexion between the demand and the supply, between thought and the signs employed for the communication of thought, are brought to view, the points of possible difference will be found to lie within a compass comparatively narrow.

Under this identity of the demand, the greatest difference which, in regard to the texture of the supply, can possibly have place, will be found to be exemplified by a distinction which will here be brought to view,—viz. that between the *sparingly* and the *copiously inflected* languages,—and for the developing of this difference, the limited number of languages which, in the best informed parts of the world, are included within the ordinary compass of a liberal education, will be found to be amply sufficient.

Under these circumstances, whatsoever degree of diversity can have place, as between any language not included in the survey taken for this purpose, and those which have been included in it, such and so numerous will be found to be the points of necessary identity, as to form all together a ground or standard of comparison and reference, to which any language whatsoever, how numerous and various and widely distant soever its points of diversity with relation to the aggregate standard so formed may be referred; and, in this way, it is believed, such will be found to be the nature of the case, that, among those languages which have not, in any degree, been included in the survey taken for the present purpose, scarcely will any one be found to which the sketch here given,—supposing it applicable, with advantage, to those languages which have been included in the survey,—will not be found applicable with little, if any less, advantage, than even to the language in which this sketch is penned.

Absolute and *relative*—in the nature and properties of every object may these two branches be observed.

In the case of language in particular, to the absolute nature of each tongue or language belongs all those particulars, for the conception of which it is not necessary to keep in view any other tongue or language; to its relative nature, the points of agreement and disagreement, identity and diversity, similitude and dissimilitude, observable on comparison made of it with other languages.

For the attainment of the most clear, correct, and complete conception that can be attained of the points of similitude and dissimilitude, as between one language and another, there are no means so effectual as a view taken of the ends or purposes of language in general, with the addition of a view taken of the *different degrees of success* with which different courses are respectively taken by them towards the attainment of those ends.

The language in which, for the purpose of giving expression to the several modifications of import of which words are capable, no use whatever is made of inflection, in which, for the giving expression to all these several diversifications of import, no other instrument is employed than that of distinct addition, would not (it is believed) be found.

But some languages there are in which, on comparison with others, the use made of *inflection* is extremely small. These may be termed sparingly inflected languages; the others, copiously inflected languages.

Between *sparingness* and *copiousness*, taken according to the common acceptation of the terms, no naturally determinate line of separation would be to be found. But, in their application to language, to the several known languages, so wide and conspicuous, in every instance, will the difference be found, that, in the particular case here in question, no ambiguity will be found to be produced by that want of determinateness by which it might, in some cases, be produced.

From this distinction, between sparingly inflectedness and copiously inflectedness, as applied to language, a variety of results have been found deducible; most, if not all of them, such, that, in a practical point of view, the importance of them, if correct, will, it is believed, be generally and readily recognised.

In the character of propositions to be proved,

Digitized by Google

they will now immediately be presented to view: what has presented itself as necessary in the shape of explanation and proof, will successively come to view as we advance.

In the field of universal grammar, four objects, or topics, present a principal claim to notice, viz:—

1. The uses or properties to which language has been, or is capable of being, rendered subservient.

2. The properties which, in the character of properties conducive to these purposes, are desirable on the part of a language; in a word, in the instance of every language.

3. The degrees in which, by the several known languages, in so far as they are known, these properties may be seen to be possessed.

4. The properties which, according to the occasion on which the language, whatsoever it be which is in question, is employed, are desirable on the part of the style, *i. e.* the language of an individual by whom, on that occasion it is employed.

I. The purposes to which language may be applied are 1, social, or principal; 2, solitary, or secondary.

II. The properties which, for all *purposes* taken together, are desirable on the part of language at large, *i. e.* as far as may be, in every language, will, it is believed, be found to be as follows:—1. Clearness, or perspicacity; 2. Correctness; 3. Copiousness, or comprehensiveness; 4. Completeness; 5. Nonredundance; 6. Conciseness, or compressedness; 7. Pronunciability, *i. e.* facility of pronunciation; 8. Melodiousness; 9. Discibility, *i. e.* facility of being learned; 10. Docibility; 11. Meliorability; 12. Ornability, *i. e.* facility of being made subservient to the purpose of ornament; 13. Impressiveness; 14. Dignity; 15. Patheticalness.*

Of the above-mentioned fifteen properties, the five first, regard being had to the difference in the degrees in which different languages are respectively susceptible of them, are, beyond comparison, the most important.

III. In respect of all these five properties, the sparingly inflected languages have, in a prodigious degree, the advantage over the copiously inflected languages.

By means of the sparingly inflected languages alone, and not by any of the copiously inflected languages, can the fundamental principle of universal grammar (and the nature of language in general) including the relation and correspondency between the nature of the thoughts requiring to be expressed and the nature of the signs capable of being employed for the expression of them, have been developed with that clearness of which they are susceptible.

To the class of copiously inflected languages, belong the ancient Greek, the ancient Latin, and the modern languages of the continent of Europe, of which, from those two, but most immediately from the Latin, the structure has been derived.

Of all known languages, the English is that which is most sparingly inflected.

Of all known languages, the English is accordingly that in which, in the highest degree, taken in the aggregate, the most important of the properties desirable in every language are to be found.

In particular, in a higher degree than any other, is the English language adapted for the purpose of a treatise on universal grammar, in which the essential characters of all language, and the fundamental principles of all grammar are intended to be brought to view.

In so inferior a degree are the copiously inflected languages, and, in particular, the Greek and Latin adapted to the purpose of being employed as instruments for the explanation of the principles of universal grammar, that it may be doubted whether, by any person unacquainted with any other than those languages respectively, a clear conception of the nature of language in general, and of the principles of universal grammar could have been conveyed or formed.

IV. By means of the lights afforded principally by this distinction between the sparingly inflected and the copiously inflected languages, and, in particular, by that enumeration by which it has been suggested, or, at least, accompanied, viz. the list of the properties desirable in language, observations may be suggested by which not only the attainment of the maximum of perfection in the style of each individual, on each occasion, may be facilitated, but the improvement of the whole body of the particular language which they respectively employ, may be placed in some degree within the reach of individuals.

For the purpose of conveying as early as possible a conception of the design and principal results of this essay, a distinction that has been observed, as between language and language, in relation to the parts of speech, must in this place be brought to view.

Essentially diversified, and *not essentially diversified*. Under one or other of these two heads will every one of them be found capable of being arranged.

Those which are essentially diversified, are those which are at the same time expressive of some one principal idea or import, and of some one or more accessory ideas, of which, according to the nature of the discourse, one or more are constantly and inseparably annexed to that principal one.

These will be seen to be, 1. The *noun-substantive*; 2. The *verb* called by grammarians the *verb-substantive*, the verb in its utmost degree of simplicity, the pure and simple verb, the sign of relative existence.

* See these treated at length in the immediately preceding Tract on Language, where several of the other matters casually noticed in this Introduction are enlarged on.—*Ed.*

Digitized by Google

Necessarily attached to the principal idea, in the instance of the noun-*substantive*, there is but one accessory idea, and *that* is that of *number*. The objects meant to be brought to view by the word in question are meant to be represented either as one only, or as more than one, and in one of those two cases they cannot but be presented to view.

Necessarily attached to the principal idea in the instance of the verb, are the diversifications of which *time* is susceptible, and the ideas of absoluteness and conditionality, one or other of which is the inseparable accompaniment of every conception that can be formed on the subject of existence, considered as the attribute of the matter of fact, the idea of which is, by the portion of discourse in question, presented to the mind.

Considered with reference to time, as applied to the signs of existence in the case in question, the verb is said to present itself to view in different *tenses*.

Considered with reference to *absoluteness* and *conditionality*, it is said to present itself to view in different *moods*.

It will be shown presently how the imports of all the other parts of speech are resolvable into the import of these two, viz. the noun-substantive, and the verb-substantive, viz. as well those which in certain languages, though not of necessity, are in fact diversified, as those of which no diversifications are to be found in any language.

It will be seen presently how it is that the noun-adjective contains not any necessarily distinct diversification, its only diversifications being those of the noun-substantive, to which it makes reference.

It will also be seen how it is that, in addition to those just mentioned, the verb-substantive requires not any diversification.

It will moreover be seen that the import of any other verb than the verb-substantive admits not of any diversification other than those which belong to the verb-substantive, insomuch as the import of every verb, other than a verb-substantive, is resolvable into the import of the verb-substantive, added to the import of a noun-adjective.

And farther on will be explained the mode in which the import of the preposition, conjunction, and adverb, is resolvable into that of the noun-substantive, noun-adjective, and verb, one, two, or all of them.

For giving expression to the above-mentioned diversifications, the authors of language have had the choice of two modes. One is by the addition of so many separate words allotted to that purpose. The other is by some change in the letters of which the sign of the principal idea, or import, is composed. Say, in the first case, by detached signs, or, more strictly, though less clearly, by distinct addition. Say, in the other case, by modification, or, to employ the word already in common use, by inflection.

Of the ideas here hazarded, should they in any instance be deemed *new*, if they are at the same time regarded as correct and just, in that case, it is not from their novelty that any consideration can justly be deducible tending to forbid their being presented to view; in the idea of improvement, that of novelty is essentially an ingredient. Among such new ideas as have been ventured to be submitted to the public eye, the endeavour to render a thorough acquaintance with the whole nature and mechanism of language more general than it is, has never been lost sight of.

CHAPTER I.

DEFINITIONS.

Grammar is that branch of art and science in and by which the words of which language or discourse is composed are considered, without any regard to the subject or occasion of the discourse, but only with respect to the relations which the imports of the different classes of words of which it is composed bear to each other, these classes of words being the same whatsoever be the subject of discourse.

Those classes of words, into which all discourse, whatsoever may be the subject of it, may be divided, are termed *the parts of speech*.

In the course taken for the providing of words for the giving expression or designation to these several imports, considerable differences are exhibited by different languages. But as to those differences which have place in the mutually related imports themselves, the demand is the same in all languages.

That branch of the art and science of grammar which has for its subject the course taken by the particular language in question for satisfying this above-mentioned demand, may be called *particular grammar*.

In so far as the modifications taken cognizance of are those which have place in every particular language, this branch of the art and science may be designated by the name of *universal grammar*; its objects are the different correlative imports which are essential ingredients in discourse, whatsoever be the subject, and which stand respectively designated by the different classes of words, called as above, parts of speech.

In so far as the imports are considered in themselves alone, and without regard to the different provision made in and by different languages for the designation of them, they constitute the subject of a branch of the art and science of universal grammar, which may be distinguished by the appellation of the *abstract* or *unapplied* branch.

In so far as they are considered with regard to the differences that have place in the provision made for the designation of them in different languages, the branch may be termed the *concrete*, *practical*, or *applied branch*.

Digitized by Google

CHAPTER II.

USES OF UNIVERSAL GRAMMAR.

Of an acquaintance with this branch of art and science, should it be asked what is the use, an answer is at hand.

1. Giving facility to the study of any particular language whatsoever.

2. Giving to study of a number of languages conjunctly, a degree of facility not obtainable by any other means.

3. In the case where a man is so circumstanced, that for the purpose in question it may be a matter of doubt with him which of several languages to employ,—affording substantial grounds for the solution of that doubt.

4. By developing the nature of the connexion between thoughts and their respective signs, between the different sorts of signs and the thoughts of which they are the signs, rendering a man the better acquainted with the nature of his own thoughts, whatsoever on any occasion may be the subject to which they apply themselves.

To give a clear, correct, comprehensive, and instructive view of the field of universal grammar, it is not enough for a man to look into the books that are extant on the subject of grammar, whether particular or universal,—he must look into his own mind.

For want of being confronted and compared with the purposes, the demand for which gave birth to the distinctions of which they are expressive,—for want of being brought to view in company with the thoughts or parts of thoughts of which they are the signs, the parts of speech have formed altogether a dark and mysterious cloud.

The only medium through which grammar, whether particular or universal, has ever yet been presented, is that in which it is presented by the languages of ancient Greece and Rome. But in both these languages, properties will be shown by which they are rendered in a high degree incompetent, and ill adapted to their purpose.

If, then, by a clear insight,—if, in a word, by a clearer insight than has been as yet obtained of the general principles of language, and of that art and science of which it is the subject, the acquisition of any and of every particular language may be made to receive a facility hitherto unexampled,—if, at the same time, in the obtaining of this insight no greater difficulty will in the case of non-adults be experienced than in the forming that acquaintance which so many actually form, with the particulars of the grammars of several particular languages; if these several suppositions shall be found verified, it will follow that the art and science of universal grammar, will present such a claim to be admitted upon the list of branches of learning as will be proof against all dispute.

CHAPTER III.

OF THE PARTS OF SPEECH.

By the name of the parts of speech are designated certain classes of words which being either indispensably necessary, or universally and highly convenient to the purpose of discourse, are to be found in all known languages.

The characters by which these several classes of words stand distinguished, and from which they are denominated, are taken solely from the consideration of the parts which they respectively bear in the composition of the mass of discourse termed a grammatical sentence, and thence from the relation which the classes of objects respectively designated by them may be seen to bear to one another, when considered in that point of view. They are the same to whatsoever part of the field of thought and action the subject and adjuncts of the discourse belong.

Of these parts, the names in general use are, —noun-substantive, noun-adjective, verb, participle, adverb, preposition, conjunction, and interjection.

The objects respectively designated by these names are some of them *single*, some of them *aggregated*, consisting each of them of a cluster of words or signs.

The simple are, 1. Preposition. 2. Conjunction. 3. Adverb. 4. Interjection.

The aggregated are, 1. Noun-substantive. 2. Noun-adjective. 3. Verb. 4. Participle.

In those parts of speech which are aggregated, may be distinguished so many sub-parts as there are different objects included under the same name.

For giving an explanation of the several parts of speech and their respective *sub-parts*, that language will be the fittest to be employed which being furnished with signs for all the necessary parts and sub-parts, is encumbered with the smallest number of superfluous ones. This language will, it is believed, be found to be the English.

In giving an explanation of the several classes of words called parts of speech, the most instructive, not to say the only essentially instructive, course will, it is believed, be found to be the bringing to view, in the first place, the classes of objects that require to be designated, and thereafter, and thereupon, the different contrivances, and as the results of those contrivances, the species or classes of words which in different languages are employed in the designation of them.

This being the track proceeded in, for the laying a foundation for grammar, the art of logic, or, as some would say, *metaphysics*, is called in and employed.

The parts of speech are parts of a sentence, parts actual or potential, all of them of one and the same sentence.

To every word, to whatsoever part of speech it belongs, there are two distinguishable im-

Digitized by Google

ports, viz. 1. Absolute. 2. Relative,—relation being had to the relative import of the other sorts of words, placed, or capable of being placed, in one and the same sentence.

The parts of speech may be divided into, 1. Significant by themselves. 2. Not significant by themselves.

Those significant by themselves are,—

1. Noun-substantive.
2. Noun-adjective.*
3. Verb unmodified.†
4. Adverb.‡
5. Interjection.

Those not significant by themselves are,—

6. Preposition.
7. Conjunction.
8. Words indicative of mood.
9. Words indicative of time.

The noun and the verb are each of them a cluster of conjugates,—each cluster composed of a root and branches.

The branches peculiar to a noun are the cases.

The branches peculiar to a verb are, 1. Moods. 2. Tenses. 3. Persons.

The branches common to nouns and verbs are numbers; *i. e.* affixes expressive of the number of the subjects or objects which are in view.

CHAPTER IV.

OF THE NOUN-SUBSTANTIVE.

SECTION I.

A Noun-Substantive—what?

The name of an entity, real or fictitious; real, as bodies of all sorts; fictitious, as motions, modifications of motions, qualities, modes or manners, powers, &c., is a *noun-substantive*.

In every language it exhibits itself in various forms,—some of them serving to give intimation of some relation of the nature of position or motion belonging to the entity; others, serving to represent sex as belonging or not belonging to it; others, to designate the number of those entities which are in question, but without any other distinction in regard to *number*, besides that between one and every greater number, or at most, as in the Greek, between one and two, and any greater number.

* *Good* is as intelligible by itself as *goodness*. Sole difference, *good* gives intimation of a subject in which the quality is about to be asserted to be inherent; whereas *goodness*, the substantive, does not.

† What is called the indicative mood, present tense, is the verb unmodified. In English take away the preposition *to*, it is a substantive. *To love*, take away the *to*, you have love, the substantive.

‡ This includes in it the signification of, 1. A preposition; 2. A substantive; 3. An adjective.

SECTION II.

Of Case.

An entity, be it what it may, is susceptible of a multitude of relations as towards other entities; when it is viewed in the character of the subject, or the predicate of a proposition, there is continual occasion for giving expression to those relations. In so far as for the giving expression to any such relation, a particular modification is given to the word by which the entity in question is designated, that word is thereby said to be put into a certain case.§

For the production of this effect two courses have been employed. One of them consists in the inserting into the texture of the proposition, a separate word appointed for that purpose. This may be termed the *external* course or method. The other consists in some change made in the letters, of which the word itself, of which the relation to be expressed is composed: this may be termed the internal method.

The external course seems the most natural. It seems to be that which would be the first to occur and to be employed. For giving expression to the principal subject, a separate term has been employed. By the same reason, and the same habit by which this mode of designation was suggested, in this instance, it seems but natural that this same mode of designation should be suggested in the other instance.

After having, for some time, been employed in company, though not in union with the sign of the subject, it was natural enough that insensibly the sign of the relation should come to be considered as an inseparable part of it, and then be put in union with it.

In the case of some of the most obvious relations, those which there is most frequent occasion to bring to view, this expedient might serve. But, as the field of language came to enlarge itself, the complication and embarrassment that would be produced by the giving such a multitude of modifications to the same word, were the expedient applied to every relation which there would be occasion to bring to view, set limits to the practice.

In the instance of some of these relations, the *internal* method, or course, continued thus to be employed. But, in the instance of other relations, the *external* method was preserved; and for every such relation that had been distinguished from the rest, a separate sign continued to be employed: being in the order in

§ The word *case*,—in Latin *casus*, a fall,—is a literal translation of the Greek πτωσις. From the Greek grammarians, Harris, in his Hermes, has given what may be called the *archetypation* of the word; *i. e.* he has brought to view the material image that has been employed for serving as a sign to the immaterial idea,—though the analogy be an extremely faint one.

Digitized by Google

which the words of the sentence were arranged, most commonly put immediately before one of the two words employed as the names of the entities, between which the relation was represented as having place, it thus acquired the name of a *preposition*.

This course, could the effects of it have been generally foreseen, this union would never have been generally adopted. In the course of pronunciation, somehow or other it happened that the termination, which was regarded as suiting this or that principal word, was not found suitable to this or that other principal word. To one class of words, one set of terminations came thus to be attached; to another class of words, another set of terminations,—for the giving expression to one and the same idea, a great variety of signs. To these different sets of terminations were given the name of declensions.

From all these inconveniences, the English language is almost, if not altogether, free. For giving expression to these relations, with only one exception, it employs no other than the external mode. No declensions are to be found in it: from that source, that abundant source of useless and troublesome complication it stands wholly free.

Of the existence of one exception intimation has just been given. This exception is that which is constituted by the mode in which expression is given to the relation of possession: in the language of grammarians, to the *possessive*, or, as it was first styled, the *Genitive* case.* But of the sign employed for this purpose, such is the simplicity,—a single letter *'s*, —and that on all occasions the same, that, not being applied in the instance of more *cases* or *relations* than this one, the internal mode is not productive of any sensible inconvenience. Applying itself to all noun-substantives without distinction, no particle of that useless system of complication, expressed by the word declension, is produced by it.

The nominative case expresses the subject of the proposition, the minor terminus, the subject in which the motion commences.

The accusative signifies the subject in which the motion terminates; it may be called the *subject-expressing* case—"John, take the bread." Bread is in the subject-expressing case.

The vocative† is an elliptical expression; if it stand alone, it is equivalent to an entire proposition including a verb in the imperative mood,—*ex. gr.*, *John!* *i. e.* John come here; *i. e.* John attend; my will is—the cause of my speaking is, a desire that John may come, may attend.

Neither of these cases signifies situation, which is relation.

The other oblique cases signify situation, either quiescent, or the result of motion.

They consequently require separate terms (*i. e.* prepositions) to express the relation where the relation is not indicated by the termination.

In English, the preposition indicative of the genitive case is *of*;—this may be called the possession-expressing case.

The dative may be called the goal-expressing case,—"Give this loaf to Mary." Mary is in the goal-expressing case: the case expressive of the *terminus ad quem*.

The ablative may be called the starting-post-expressing case,—"Take Thomas' loaf *from the* oven." The oven is, in the starting-post-expressing case, the case expressive of the *terminus a quo*, i. e. the thing, or event, from which it is desired, the motion desired shall commence.

Section III.

Of Gender.

Gender is the sign either of sex or the absence of it. Masculine and feminine of the two sexes: neuter of the absence of sex.

When the form given to a noun is that which causes it to be said to be of the masculine gender, an assertion which it expresses is, that the object of which the noun is the sign is of the male sex; and so, in the case of the feminine gender, of the female sex. When it is that which causes it to be said to be of the neuter gender, the assertion which it conveys is, that the object of which the noun is the sign is not of either sex.

Applied, as it is, to common names, this modification, wherever it is employed, is altogether an useless one, and not merely useless, but replete with absurdity and pregnant with inconvenience.

The English language is, in relation to this point, a perfect model. It attributes not, on this occasion, sex to any object that is not endowed with it. By the entire name, and not by any particular modification of the name, it attributes sex to such objects as are really endowed with that quality.

In the languages of classical antiquity, the Greek and the Latin, and in most modern languages that are chiefly derived from them, not to speak of others, in the form of the *conjugational* suffixes, and in that of the *pronominal adjuncts*, one or both, in speaking of the subject, be it what it may, a real or fictitious entity—if real, a thing or person,—intimation is given that it is of one or other, or neither, of the two sexes.

When true, the intimation thus given is su-

* In the singular number, besides the prepositional genitive, there is the inflectional formed as above by *'s*, but in the plural the inflectional is wanting. The use of the inflectional form is its subserviency to, 1. Conciseness; 2. Clearness (viz. by preventing entanglement and ambiguity); 3. Impressiveness (in some cases.)

† The vocative is expressed without a pronoun; O! may be added or not. Is it not a contraction *for hear?* In Latin from *audio?* In English either from the Latin, or from the French *oyer* which is from *audio?*

Digitized by Google

perfluous, and it is useless when not true. Besides being superfluous and useless, it is a fertile source of confusion and indistinct and erroneous conception,—in every case a blemish and a nuisance.

Upon the conception and memory of the learner of the language it is a load, and that a very burthensome one.

Section IV.

Of Number.

A sign for the distinction of numbers,* *i. e.* of more than one from one alone, is, it has already been observed, indispensably necessary. In every instance, so that the purpose be but answered, the shorter the sign employed the better: and here so perpetually recurring is the demand for the distinction, brevity is of very particular importance. A single letter attached to the word by which the object is designated, when more than one of the sort is meant to be brought to view, is the shortest sign that can be employed. Shorter than a whole word employed on purpose, the instances excepted,—of which the number must necessarily be small, confined to the number of the vowels,—in which a word, consisting of no more letters than one, can, for such a purpose, be spared.

Here, then, is another point in respect of which the English language presents a model of perfection. To this purpose it allots a single letter; and, with the exception of a very few words, remains of the language in its earliest state,† this one letter serves for all words of this class,—on this head, as on the former, none of those declensions by which the Greek and the Latin are infested.

To the *noun-substantive* alone, and neither to the verb nor the noun-adjective, belongs, in the nature of the case, the affection or modification of *plurality*. It is only in the case of the substantive that the attaching to the word the sign of plurality can be of any use. Attached to the verb or even to the adjective, it is so much useless complication. *Abel is a good boy. Cain and Abel are good boys.* Here the adjective, when employed for giving expression to the plural number, or the state the adjective is in, differs not in any respect from the state it was in when employed for giving expression to the singular number. In Latin the adjective would, in the first case, be *bonus*, in the other case *boni*.

True, in the English, in the case where the persons meant are more than one, in the case of the verb, a word is employed different from that which is employed where one and no more is meant to be brought to view. But, even in English, some instances of superfluity in inflection may be found, and this is one of them. As by the noun-substantive alone the two numbers are sufficiently distinguished in other cases, so might they have been in this. For distinguishing the three classes of persons denoted by we, ye, and they, these pronouns serve of themselves, the verb being in the same letters in all three cases,—We love, ye love, they love. In the singular, indeed, the third person is in a different form;—not he love, but he loves. But, as *we* suffices to distinguish the first person from the third, in the plural, so might *I* have sufficed in the singular. Accordingly, in the subjunctive mood, which, in so far as it differs from the indicative, is an unnecessary one, *love* serves for the third person singular, and even for the second person singular, as well as for the first.

Every proposition in which the noun is in the plural number, is a complex one; and, as such, resolvable, at least in its origin, into a multitude of propositions, according to the number of the persons or things which occupy in it the station of subject or predicate, to which soever it be that that number is attributed.

When the number of these objects is determinate, the number of the simple propositions included in the complex one thus formed, will be exactly equal to the number of these objects, and so far *no abstraction will necessarily have had place.* When the number of these objects is altogether indeterminate, so, of consequence, must be the number of the simple propositions requisite to the constituting one equivalent to the supposed *plural* one.

Take the state of things when the primeval society consists of four persons, Cain and Abel being born to Adam and Eve. Applied to persons,—*They are asleep*, addressed by Eve to Adam, will have for its equivalent these two simple propositions, *Cain is asleep—Abel is asleep.* A sister, suppose, is born to them;—the numbers of simple propositions capable of being included in a pronoun-substantive of the first person, is now increased from two to three.

As soon as the plural becomes indefinite, *abstraction* is performed, the idea of a class is formed, an aggregate of which the individual elements are susceptible of continual change.

CHAPTER V.

OF THE ADJECTIVE.

An adjective is the name of a quality or re-

* The first step in the track of abstraction is the use of the plural number. The *singular* and *plural* numbers might be referred to the head of *cases*; considered as a species of *case* indicative of two species of numbers, into which two species, the whole aggregate of numbers actually and possibly exemplified, is by these two appellations divided in the *dichotomously exhaustive*, or say *exhaustively dichotomous mode.*

† Man, men; woman, women; child, children; brother, brethren; sisters not; the demand for the frequent mention of *sisters* coming later than that of the frequent mention of *brothers.*

Digitized by Google

lation, accompanied with an intimation of the existence of a subject in which it is, to which it belongs, of which it is *a* or *the* property. *Celer puer*, a boy in whom is the quality of celerity.

The corresponding abstraction—denoting substantive, is the name of the quality unaccompanied by any such intimation of such substantive existence.

Though the name of the abstract fictitious entity, the quality, be prior in the order of tradition, to the adjective name, it was not probably in the order of existence. *Bonus* existed before *bonitas*—(as its brevity imports) *humanus* before *humanitas*.

Case, gender, number: of none of these *affections* of the noun-substantive has the noun-adjective any need. In all these particulars its import is determined, determined with perfect clearness by the connexion it has with the noun-substantive, by the connexion which the sign of a *quality* has with the sign of the *subject in* which it is meant to be represented as inhering.

In this particular, again, the English may be seen presenting a model of perfection. In the English the adjective is everywhere altogether undeclinable.

The substantive has but two *declensions*, two signs of modification,—the sign of the genitive case in the singular number, and the sign of the plural number in all cases. In the adjective even these modifications are unnecessary: accordingly, in the English, they have not either of them any place.

In the Latin and Greek languages the terminations of which the noun-adjective is susceptible, are determined by correspondency with the terminations which stand attached to the noun-substantive.

CHAPTER VI.

OF PRONOUNS.*

Pronouns are either substantive or adjective.

The pronoun-substantive, as the name imports, is but a noun-substantive of a particular kind.

The pronoun-adjective, as the name imports, is but a noun-adjective of a particular kind.

CHAPTER VII.

OF VERBS.

SECTION I.

A Verb—what?

A verb is the name of a quality exhibited as momentary, having place on the particular occasion in question, coupled with intimations of the dependency or independency of its existence, and of the several modifications of time in which its existence is represented as being placed.

A verb is either simple or complex. There is but one simple verb, and that is the verb-substantive,—the word of which the function is to designate existence, as ascribed to any subject.

By the addition of a word, expressive of absence or negation, it is rendered significative of non-existence.

In comparison with this, every other verb may be termed complex. For, in the signification of it is involved the signification of some *adjective*, in which, as above-mentioned, is already involved the import of some quality, coupled with the existence of some entity in the character of a subject in which that quality is to be found.

A verb, whether simple or complex, may be considered either with or without the several *modifications* of which it is susceptible—in a modified or in an unmodified state.

These modifications are either absolute or relative: 1. Absolute modifications are present, past, or future, with reference to an indeterminate point of time; 2. Relative modifications being such with reference respectively to some determinate point of time considered as present, past, or future, coupled also with the intimation of the state of existence, either active or passive on the part of the subject, *i. e.* the entity, real or fictitious *in* which the quality exhibited by the verb is considered and represented as existing.

For the explanation of these modifications, let us, were it only in consideration of its simplicity, begin with the simple verb,—the verb substantive.

A verb is the sign of existence. The modifications essential to a verb are those which are essential to existence, considered in that limited point of view in which alone the human faculties enable us to consider it. Of these modifications there are two sources:—1. Difference in respect of time; and 2. The difference between absolute and conditional existence, say rather between the case in which existence, as applied to any subject, is regarded by the speaker as absolute, *i. e.* certain, and that in which it is regarded by him as conditional, *i. e.* as uncertain, depending upon this or that event or state of things, the existence of which is regarded as a condition to its existence.†

* The examination, so far as respects this head, (as likewise that of participle and preposition,) does not seem to have been followed out by the author, and the subjects are thus briefly filled in from mere jottings found among the MSS.—*Ed.*

† By the word uncertain, though according to our forms of speech, spoken of as a quality belonging to the event or state of things which is the object or subject of consideration, no really existing object corresponds other than the state of the mind by which that event or state of things is contemplated. Take any conceivable state of things at pleasure,—either it exists or it does not exist, between its existence and non-existence there is no

Digitized by Google

A verb is equally capable of existing, and being considered, in an unmodified as in a modified state.

1. As to those modifications of which *time* is the source.

No event or state of things can have existed but it must have existed in some portion or other of the field of time.

But in speaking of it as having existed, it is not necessary that of the portion of time in which it is regarded as having existed, any intimation shall be made.

2. Next, as to those modifications of which the difference between certainty and uncertainty, absoluteness and conditionality is the source. By the speaker in question, of the event or state of things in question, though in itself either existent or non-existent, the existence may have been regarded as certain, or it may have been regarded as conditional. But it is not necessary that of the point of view in which in this respect it has been contemplated by him, any intimation shall, in his discourse, have been conveyed.

Section II.

Of Person.

By persons, understand the several words or parts of words which are employed in making known, of which of those human beings, namely, a person speaking, (styled the first person;) a person spoken to, (styled the second person;) or a person spoken of, (styled a third person;)—what is said, is designed to be understood.

In the language of grammarians, persons are words representative of human beings bearing the above relations.

In English, these relations are expressed by pronoun-substantives without inflection.

Section III.

Of Number.

The relation of number is expressed in English by pronouns, without inflection, except in the second person singular, to which the plural is almost always substituted.*

The plural number supposes abstraction made, it implies the existence of a certain class. *Thou* and *he* do not compose a class; *we* not necessarily, where the persons are certain, yet it frequently does; *we* means *I* the speaker and some class *I* belongs to; *you*, *ye*, the person spoken to and some class of persons you belongs to.

Section IV.

Of Tenses or Designations of Time.

By the denomination of tenses are designated some words or parts of words which, when added to the word expressive of the principal, or say radical, idea, are designative of the ideas of so many distinguishable accessory modifications of relative time, in which the motion or state of things is meant to be spoken of as having place.

In the mind of every man, on every occasion, time naturally divides it self into three portions—the present, the past, and the future.† The designation of these three portions, respectively, is the only mode of designation that can be termed simple.

But whatsoever portion of time is now past, was at one time present, and at that time had its past and its future.

Moreover, whatsoever portion of time is now future,‡ will, should it ever have place, be present, and then like a portion of present time, it will have its past and also its future.

As time flows on, the absolute portions of time of which these names are designative, are continually upon the change—at every instant different from what they are at every other.

Of one of these portions of time, all language is essentially and necessarily designative, and that is the present, the portion of time that has place while the discourse is going on. Why necessarily?—*Answer*. Because a thing, and the only thing immediately and necessarily expressed by language is the state of mind that has place in the instance of him who is thus using it.

Past and future, manifestly and constantly, are words of reference, and even present may be such.

Hence, out of these three simple modes of designation arise seven compound ones,—making, in the whole, ten.

1. Simply present,—I am.
2. Simply past,—past without reference, I struck, I did strike.
3. Simply future.
4. Present, with reference to a portion of time past,—I was.
5. Present, with reference to a portion of time considered as future.
6. Past, with reference to present time,—I have been.
7. Past, with reference to a portion of time past,—I had been.
8. Past, with reference to a portion of time considered as future,—I shall have been.
9. Future, with reference to a portion of time past,—I was about to be; I have been about to be; I had been about to be.
10. Future, with reference to a portion of

medium; suppose it to exist, all uncertainty is out of the question, suppose it not to exist, all uncertainty is equally out of the question.

* By this means, at the expense of an absurdity, simplicity is attained.

† *Present*, the subject of perception; *past*, of recollection; *future*, of expectation.

‡ All future time is essentially uncertain, conditional, for at no one instant do we know for certain that there will be anything in any other; that there will be another instant.

Digitized by Google

time considered as future,—I shall be about to be.

But of whatsoever is considered as having place in these several portions of time respectively, the existence may be considered as absolute, or as conditional.

Adding to these absolute tenses so many conditional ones, we have thus twenty different designations applicable to so many differently considered portions of time.

Whatsoever be the species of action, and whatsoever be the portion of time, in which, by the representation given of it, it is placed, —if, in the nature of it, it was susceptible of continuance, and if, for the purpose for which it is brought to view, it be required that such its continuance be brought to view,—it is a matter of no small convenience when the structure of the language is such as admits of the bringing the fact of such continuance decidedly and distinctly to view.

Of the existence of this feature of convenience, the English language affords an exemplification; of its non-existence, the French.

I am now walking to Charing Cross; I was walking yesterday in the Park; I shall be walking to-morrow in the Park.

Many are the occasions in which the importance of an action depends on its continuance. If the structure of the language admit of it, the bringing to view this continuance is, on an occasion of this sort, frequently a great beauty, —the not being able to do so, a great defect.

The French language admits not of the giving, in this manner, continuance to any portion of time, nor, therefore, in a word, to any action.

In a translation made from that language into English, the advantage thus attached to the English is apt to be overlooked; and the word employed in the English being, in this respect, the literal translation of the French word, the poverty and unexpressiveness of the French language is thus transferred into the English.

This designation of *continuance* may be applied to, or withholden from, any one of the above-mentioned designations of time: to the before-mentioned twenty distinguishable designations of time, adding twenty others, we have thus forty for the grand total.

Under the particular structure of the English language the future tense, including its modifications as above, admits of an additional modification almost, if not altogether, peculiar to itself.

In consequence of this modification, it requires to be distinguished into two species,— 1. The simply predictive future; 2. The dominative future.

The simply predictive future is that which it has in common with other languages in general.

The dominative future is that which is peculiar, or almost peculiar to it, as above.

The future may be termed dominative, where the event predicted is spoken of as being the result of the power and will of him who speaks.

The dominative future may be termed *imperative*, when the event so predicted is spoken of as being an action about to be performed by a person, or persons, to whom the discourse is addressed.

In the absolute mode or form, for the giving expression to these two modifications of the future tense, the two words *will* and *shall* are employed with their respective conjugates; but, in the performance of this function, they make a mutual exchange of their significations in a manner which, to persons who are not perfectly familiarized to it by incessant use, is to a high degree perplexing.

For expressing an opinion affirming the absolute futurity of the event spoken of, we thus see that the English language has two auxiliary words, viz. will and shall.

1. In one thing, they both agree, viz. in that an event being, by other words in the sentence, brought to view, they both of them are expressive of an opinion on the part of the speaker that that event will take place; and that absolutely, no other event, or state of things, having place, on the existence of which, in the character of a condition, the event in question is dependent.

2. Another point in which they agree is, that, over and above the futurity of the event, as above, each of them, to the expression of an opinion to that effect, adds the expression of an opinion that, when it does take effect, it will have the will of the speaker for its cause.

The particular in which they differ is this: viz. the intimation thus given of the dependency of the event in question upon the will of him who speaks, does not, in the two cases, apply to the same persons.

When the purpose is, that this dependency should be considered as having place,—if the event in question be an act to be performed by the speaker, in which case the verb employed by him is in the first person, *will* is the futurity-denoting auxiliary verb to be employed, as I *will* read.

For this same purpose, if the event be either a mere event, or the act of a person or persons other than the speaker, the futurity-denoting verb employed must be the verb *shall*.

When employed in conjunction with the sign of the first person plural, viz. we, no such intimation is given.

Of the six descriptions of persons in conjunction with the signs of which this verb, as well as every other verb, is capable of being employed; viz. the first, second, and third person in the singular number, and the same in the plural number,* one there is, viz. that

* 1. The person, if but one, who is speaking.
2. The person, if but one, who is spoken to.
3. The person or thing, if but one, who is spoken of.

Digitized by Google

indicated by the first person plural, concerning which it is not possible, in the nature of the case, that the strength of the assurance expressed should be equal in strength to the strength of the assurance expressed by the first person singular. Say, for example, we *will* read. For affirming my assurance of the futurity of the act, in so far as it is an act of my own that is in question, the first person—I will read—serves correctly and completely; but if, in conjunction with an act of my own, I apply the same sign of futurity to the respective acts of a set of persons with whom I consider myself as associated, it is impossible that, in relation to the description of the persons whose will in the result is represented, it should convey the same idea as that which it conveys when applied to the first person singular, viz. my own person alone. Let it be supposed that, in the instance of those other persons, I may, so far as concerns their acts, their external conduct, and that, at a future time, be as well assured as I can be of my own; still, in regard to the state of their will, —of their internal and secret inclinations, and that too at the very moment of uttering the discourse in question,—no such equal assurance is possible in the nature of the case. In this case, therefore, the import of the word is attended with a sort of ambiguity and indeterminateness with which it is not attended in any other of the six cases.

With respect to any set of persons whatsoever, an intimation which, by the use of one of these words it is in my power to express, is, that in so far as concerns the act which the principal verb is employed to designate, viz. the act of reading, their conduct is dependent upon my will; but, in this case, the class of persons in which, by my mode of speaking of them, I place them, must be that which, in grammatical language, is termed the third person plural, as above; that is, in other words, in speaking of them I must say, *They shall read.*

Here occurs another question. Supposing my design to be to represent the act, or other event in question, as depending upon their joint wills, for an import to this effect, by means of either of the two auxiliary verbs in question, shall and will, or by any other words, does the language afford any and what phrase? The answer is in the negative. By the phrase *they will read*, the import will not be conveyed. By that phrase an import that is not conveyed is, that their reading is regarded by me as dependent on my will; but neither is any such import conveyed by it, as that it will be dependent on the will of all of them together, or of any one of them. The event spoken of may, according to the description thus given of it, have alike for its cause either an act produced by a concurrent determination of their own respective wills, or a state of things in the production of which no part has been brought about by the will of any one of them.

The imports, for the expressing of which these two auxiliary futurity-denoting verbal particles afford the means, are simply two.

1. That the result which is meant to be represented, as about to have place, and for the designation of which the principal verb is employed, is meant to be represented as dependent upon the will of him who speaks.

2. That that same result is not meant to be represented as thus dependent.

In both these cases, to carry into effect the intention in question, viz. in so far as, in the nature of the case it is capable of being carried into effect, through all the six persons for the designation of which language in general has furnished expressions, both these auxiliary and futurity-denoting verbs are necessary.

But for the giving expression to these two opposite imports respectively, a course that will not serve is the course which, in general, is the only course which, for such purposes, can be made to serve; viz. the employing in one of the two cases throughout all six persons, one of these two words, and in the other case the other.

No; but for the giving expression to these two opposite meanings in the instance of each of them, both these words require to be employed, viz. as applied to some of the six descriptions of persons, the one of them; as applied to others of those same six descriptions of persons, the other.

For placing all this matter in what it is believed will be found a clear light, the following two scales of phrases, by one of which one of the two imports is meant to be expressed, —and by the other of them the other, will it is hoped, be found to serve.

Case I.—Case in which the event is meant to be represented by me (the speaker) as dependent upon my will, this may be called the imperative, or dominative, or tyrannically predictive future.

Singular Number.

First person,.....I *will* perish.
Second person,.....Thou *shalt* perish.
Third person,.....He, she, or it, *shall* perish.

Plural Number.

First person,.....We *will* perish.*
Second person,.....Ye *shall* perish.

4. The speaker, with the addition of the persons with whom he represents himself as associated.

5. The persons whom, in a number greater than one, he considers himself as speaking to.

6. The persons or the things, or the persons and things, which he considers himself as speaking of.

* In this person the assertion expressed is not capable of being so determinate in this number as in the singular.

Digitized by Google

Third person,.....They * *shall* perish.

Here, in the singular number, the measure of power, of the existence of which intimation is given, is greater than in the plural-it is possible to be. Be the power of him who speaks ever so great, there exists not any person of the state of whose will he can have an assurance altogether so perfect as that of the state of his own will.

In both numbers, when the *dominative* future is *imperative*, the measure of power expressed by it is greater; indeed, with strict propriety, it may be said to be infinitely greater, than that which is expressed by the formal modification styled hitherto, by grammarians, the imperative mood.

Employing the imperative mood, addressing myself to any person, and saying, *Speak thou*, or *Speak*, all that I give intimation of is, that it is my desire that he should speak. Employing the dominative and imperative future saying, *Thou shalt speak*, besides giving intimation of the existence of a desire on my part that he should speak, I moreover give intimation of a persuasion on my part that so irresistible is the influence exercised by my will on his, that the fulfilment of it is an event that cannot but take place. Such, beyond doubt, will be his conduct, and that conduct will have had for its cause, either on his part the knowledge of my will, or else my agency in some other mode.

Case II.—Case in which the event is not meant to be represented by me (the speaker) as dependent upon my will. This may be termed the simply predictive future.

Singular Number.

First person,.....I *shall* perish.
Second person,.....Thou *wilt* perish.
Third person,.....He, or she, or it, *will* perish.

Plural Number.

First person,.....We *shall* perish.
Second person,.....Ye *will* perish.
Third person,.....They *will* perish.

What remains is, employing successively through all six descriptions of persons, the same one of the two futurity-denoting words in question, to subjoin to it on the occasion of its application to those several descriptions of persons respectively, an intimation of that one of the two imports in question, of which it is expressive. In this case the explanation given is the same as that given in the others, the only difference is that which regards the order in which the particulars are brought to view.

* They, viz. those male persons,—those female persons, or those things, or one or all of those classes together.

Case I. *In which* will *is the word employed.*

Singular.

First person,.....I will perish. Intimation that the event in question is dependent on the will of the speaker, is, in this case, given.
Second person,.....Thou shalt perish.
Third person,.....He, she, or it, shall perish.
In neither of these cases is any such intimation as that in question given.

Plural.

First person,.....We will perish. In this case a decided intimation is given, that, in so far as regards the fate or condition of the speaker, the event is dependent on his will. But in so far as regards the fate or condition of his alleged associates, the intimation given is, that it depends, in some way or other, upon their wills and his taken together; but as to what part their respective wills will respectively bear in the production of the event, no peremptory determination is expressed, because, in the nature of the case, no such peremptory assurance can be entertained.
Second person,.....Ye will perish.
Third person,.....They will perish. In neither of these cases is intimation of the dependency of the event on the will of the speaker conveyed.

Case II. *In which* shall *is the word employed.*

Singular.

1. First person,.....I shall perish. Intimation not given that the event is dependent on the will of the speaker.
2. Second person,.....Thou shalt perish.
3. Third person,.....He, she, or it, shall perish. Intimation given in these two cases that the event is dependent on the will of the speaker.

Plural.

4. First person,.....We shall perish. Intimation not given.
5. Second person,.....Ye shall perish. Intimation given.
6. Third person,.....They shall perish. Intimation given.

In a jest-book story, the mode in which a foreigner is apt to make a mistake in the application of these two words, is presented in a half-disastrous, half-ludicrous, point of view. The stranger has fallen into the water, and he cries out to the bystanders, "Help! help! I will be drowned! Nobody shall save me!"*

* *N. B.*—The person on whose will, by the simple use of the portions of the auxiliary verbs *shall* and *will*, as above, it is in the power of him who speaks or writes, to represent the event or state of things in question as being dependent, is

Digitized by Google

Should and *would* appear, at first sight, as derived from and corresponding to *shall* and *will* respectively, and thence to one another. But this correspondence is far from being so perfect as at first sight might be expected.

1. Should has two perfectly distinct senses, viz. the conditional, and what may be termed the moral. 1. The conditional; as, if I should move, I should fall. 2. The moral, or monitory; as, You should take heed, lest you should fall. Here, in the first clause, the word *should* is moral, monitory,—importing that, in the opinion of the speaker, the performance of the act designated by the principal verb, is the object of moral duty or obligation, at any rate, of prudence, considered as choosing and employing means to the attainment of ends, good being included under that notion.

1. Preceptive in respect of probity, *i. e.* designative of what is conducive to general welfare; as—

In whatever you do for the furtherance of your own interest, you *should* never be disregardful of the effect it may have on the interest of others.

2. Moral, in respect of prudence, abstracted from the consideration of the end aimed at, consisting in the choice of means considered with reference to the probability they present of contributing to the attainment of the ends; as—

In whatever course you take for the furtherance of your own interest, you *should* never appear to be regardless of the effect it may have upon the interest of others.

So, in matters where morality is out of the question,—if you wish to hit a mark, you should be sure to take good aim.

Section V.

Of Proper Moods, or Moods properly so called.

The existence predicated may be either absolute or conditional,* *i. e.* certain or uncertain.

The mood employed in the giving expression to the absolute mode of predication is, by the Latin grammarians, termed the *indicative:* in this the action is stated as being real. The mood employed in giving expression to the conditional mode, is the *potential:* † in this the action is stated as being imaginary or fictitious, feigned for the purpose of discourse.

The absolute mood is the simple, the most natural, and most usually employed.

The conditional mood is expressed by adjuncts, some belonging to verbs, some being conjunctions.

The Greek subjunctive is either indicative or potential, *i. e.* absolute or conditional.

The following are the modes of conditionality, and the modifications applied to the import of may and can, by the addition of the negative *not*.

I. May.

I may strike, perhaps, if I will. May signifies liberty and power, but coupled with uncertainty as to the question whether it will be exerted or not. Present liberty-asserting, uncertainty-asserting.

As applied to an event not considered as subject to human will, to the will of any person in question, may signifies uncertainty in regard to the fact of its taking place.

II. Can.

I can, &c.—Present power-asserting,—perhaps, is here scarcely applicable.

III. Might.

I might (perhaps) strike.—Conditional liberty-asserting.

IV. Could.

I could (perhaps) strike.—Conditional power-asserting.

V. Would.

I would strike.—Conditional volition, or desire-asserting.

N.B.—Would, and more particularly *would not*, have also an absolute sense. *When Eurybiades struck, Themistocles would not strike;* i. e. he chose to abstain from striking.

VI. Ought to.

I ought to strike.—Moral obligation-asserting present or future, absolute or conditional.

VII. Must.

I must strike.—Present necessity-asserting.

VIII. Should.

I should strike.—Present necessity-asserting, with an obscure intimation of imperation. Low moral obligation-asserting.

IX. May not.

I may not strike. May here imports futurity, perhaps is here applicable.

X. Cannot.

I cannot strike. Can here imports present time, perhaps is not here applicable.

The use of the categorical or absolute senses must, in the order of invention, have come before and served as a basis of the conditional. The language of brutes is, throughout, absolute; conditionality embracing,—a prospect taken of the future through the medium of the past and present, is an object, to the surveying of which no eye inferior to the human is competent.

Section VI.

Of Improper Moods, or Moods improperly so called.

Absoluteness and Conditionality:—Under the name of *moods*, these are the two modes of designation actually established by ancient use for the designation of time. Of the forms that occur in language, these are the only two to which the term mood can with propriety be applied, not but that in itself, for any one thing, any one term is just as applicable as any other; but that, after its having been applied

only himself. He cannot, in this way, represent it as being dependent upon the will either of a person spoken *to*, or of a person spoken *of*.

* Absolute, Aristotelice, categorical; conditional, Aristotelice, hypothetical.

† Note here the mood termed subjunctive; in Greek, it has a different termination from that of the potential,—in Latin it has not.

Digitized by Google

to this purpose, to apply it to others so widely different and separate from it; in *that* it is that the impropriety consists.

Of these improper moods, the usage of language affords two examples:—

One is, that which by the Latin and Greek grammarians is so improperly termed the *imperative*. The *optative*, a term applied by them in certain cases to another mood, would for this, it will be seen, have been the more proper adjunct, supposing the term *mood* properly applied.

The other is a form which may be termed the *causal* mood, in the Hebrew tongue, it is exemplified, and is denominated *Hithpahel*. In the Scottish dialect of the English language, though there is no denomination for it, it is exemplified in the phrase, he caused make. So also in French, *il fit faire*.

What by the Latinists is termed the imperative form, seems to be improperly put upon the same line with, and designated by the same name, as those other forms which, as above, are termed moods.

That which it expresses is, in all cases, the existence of a *will*, an act of *volition*, to a certain effect on the part of the speaker or writer. To the designation of this will the term *imperative*, considered as applied to all the modifications of which the expression of that will is susceptible, is in a remarkable degree defective; and, by reason of that deficiency, improper, improper in no fewer than three out of four cases.

Be the case what it may, such will, so expressed, will have for its object either some event, or some state of things. In speaking of this event, or state of things, either some person will be considered in the light of a person by whose will and consequent agency it will or would be made to take place or not; if not, the will expressed is of that sort which is called a wish, and the mood by which expression is given to it has been termed the *optative*.

In the other case, the person in consequence of whose agency it is supposed that the event, or state of things in question would be made to take place, is either the person to whom the discourse is addressed, or some other person; in this latter case, likewise, the mood comes under the same denomination, the optative.

When the person by whose agency it is supposed that the event, or state of things in question would be produced, is a person to whom the discourse is addressed, the relation borne to him, in the order of power, by him who speaks, may either be that of a *superior*, that of an *equal*, or that of an *inferior*. It is in that case alone in which the relation borne by him, as above, is that of a superior, nor in that, but when the superiority is so decided and acknowledged as to give to the expression of his wish, so denoted, the character and denomination of a command, that the term imperative can with propriety be applied to it.

It is when the person by whose agency it is desired that the event, or state of things in question should be produced is the Almighty, that the imperfection and absurdity of this denomination presents itself in a striking point of view. Grant us, O Lord! Hear us, O Lord! Taken in themselves, and without a thought bestowed upon the grammarians by whom a common appellation has been bestowed upon these forms, there is nothing to which any such idea as that of impropriety appears to attach itself. But when to such a form of speech, when to any form of speech, addressed to a person conceived to be in such a situation, any such appellation as that of *imperative* is applied, then it is that the impropriety—and that rising to a degree of absurdity, involving a virtual contradiction in terms, may be seen to manifest itself beyond dispute.

Such as it is, under the restrictions above brought to view, the form of speech brought to view under its trivial name, the imperative mood, may be termed the imperative mood.

All this while, there exists a form of speech which, though not termed *imperative*, is not only *imperative*, but more strongly and pointedly and forcibly imperative, than that which alone hath, as yet, been ever styled imperative. I speak of that which may be termed the *imperative future*, a form of speech which requires to be placed in contradistinction to that other, which may be termed the *predictive*, or simply the predictive future.

This is the form of speech which, in the English language, is in some cases designated by the word *shall*, as when a man says, *thou shalt*, or *you shall*.*

Go to school again to-morrow; you shall go to school again to-morrow. In and by these forms of speech, the mode of optation properly termed *imperation*, is plainly enough expressed; but neither is it less undeniably manifest that, by the latter, the form in which the command is expressed is much more forcible than in the former. Speaking to a child of mine, and using the first-mentioned of these forms, all that I give him to understand is, that, at the time in question, it is my will, my desire, that he should repair to the place in question. Of the expected efficacy of the will or desire thus notified, I say nothing; but if I say, to-morrow you shall go to school, that which I give intimation of is, not only that such is my will and desire, but that, in my own persuasion, such will be the effect of the notification made of such my will and desire, so strong, so irresistible, the force and influence of the command so notified, that upon, and in consequence of the notification so made of it, obedience, that obedience in and by which the wish and desire will have received its accomplishment, cannot but take place.

* See *shall* and *will* considered at greater length above, p. 251. That portion of the MS. bears a date at a considerable interval from that of the present portion.—*Ed.*

Digitized by Google

In English, the mood termed imperative, is expressed in the singular by the simple omission, or non-apposition, of the pro-nominal sign of personal relation. In the plural, the expressed pro-nominal sign is inserted, or not, according as on the occasion in question, it is or is not needed; when inserted, the pronoun is put after the verb, and thus the imperative is distinguished from the indicative.

The imperative mood, as being the expression of want and desire, is probably of very early invention. It is implied and involved in the use of the vocative case of the noun. Addressed to an individual, the name being a proper one, imports no abstraction, as a common name does, whether the article *a* or *the* be prefixed to it.

The subjunctive mood serves to mark the connexion given to the name of the action, with a proposition indicative of the time which is the object of reference in the indication of the time of it.

The infinitive mood is synonymous to that verbal noun which is the name of the correspondent action; and in Greek is accordingly declined with the article τὸ; the variation of termination being confined to the article. This is the ground-work of the whole verb.

Section VII.

Of Voice.

Voice has place in that case alone in which the verb being transitive, the proposition of which it forms a part is complex.*

Of the instances in which we have occasion to speak of *motion*,—in some the motion is with relation to our organs and means of observation, *boundless*, in others *bounded*.

The instance in which it is boundless is that of the celestial bodies, the planet on which we live, taken in its totality, included. In these instances, we learn not where the motion had its beginning, nor where, nor even whether anywhere, it will have an end.

But for the most part, in the instance in which we have occasion to speak of motion, the motion is bounded. Viewing it as it goes on, we either know, or have the means of learning, where it actually began, and of conjecturing, with more or less probability of success, where it will have an end.

Of the instances in which the motion in question has, or is considered as having, both a known beginning and a known end, in some its beginning and end are spoken of as having place in different bodies, in others, as having place in the same body. When it is considered as having place in different bodies, the verb which is employed in the designation of its commencement, according to the grammarians of antiquity, is said to be in the *active* voice. The verb which is employed in the designation of its termination, is said to be in the *passive* voice.

The verb at large, considered independently of the action of time, and conditionality and unconditionality, involves in its signification that of some quality, active, passive, or neutral, coupled, as in the case of the adjective, with the intimation of some subject in which it is to be found.

In so far as the quality indicated by the verb is an active quality, the verb is said to be a verb active, and to be in the active voice.

In so far as the quality indicated by the verb is passive, the verb is said to be a verb passive, and to be in the passive voice.

The passive voice has more of complication and refinement than the active. It involves the consideration and expression of causation; it brings to view an effect actually produced. It is, therefore, probably of later invention than the active.

Section VIII.

Of the Participle.†

The participle is an adjective. It agrees with most of the parts of the verb in so much, as to that signification which it has in common with the adjective, it superadds the designation of some portion of time.

CHAPTER VIII.‡

OF GOVERNMENT AND CONCORD.

With the ideas that belong properly to the subject—with the purely grammatical ideas—a ludicrous mixture of moral and political ideas has happened in this case to have been associated. In these latter times, Darwin has sung the loves of the plants; but ages before Darwin, Lilly and others had sung the loves, not altogether pure from the tyranny, of the parts of speech.

Here issues to view an additional mass of useless complication,—mere evil, unalloyed with any particle of good. Anarchy would everywhere be an advantageous substitute to such government,—discord, to such concord.

Of the herbage of this jungle, a suspicion arises that the seeds were sown by the muses.

Once more, in the structure of the English

* Of a proposition, whatsoever there is of complexity, is always in the predicate; the subject is always simple, excepting that complexity which consists in plurality,—when the subject is in the plural number.

When the verb is in the first person, being a neuter or non-active verb, the proposition may be a complex one, but if it be in the second or third person, the proposition is always a complex one.

† See note * to p. 348.

‡ The following, which is merely an initiatory fragment, is all that has been found in the MSS. in relation to this department, which, to judge from his memoranda, the author intended to discuss at considerable length.—*Ed.*

Digitized by Google

language, scarcely a trace is to be found of the tissue of useless and unamusing fictions designated by those two names.

CHAPTER IX.

OF PREPOSITIONS, ADVERBS, AND CONJUNCTIONS.

SECTION I.

Their Connexion.

The three parts of speech here in question, viz. prepositions, adverbs, and conjunctions, require, in some respects, a conjoint consideration.

In many instances, the different functions designated by these three several names are performed by one and the same word.

Of the imports respectively belonging to them, that of the preposition is most simple. By the addition of some further import or imports belonging to some one or more other parts of speech, the import of the preposition becomes identical with that of the adverb; and in some instances at least, by the addition of a still ulterior body of import, the import once already augmented, as above, constitutes and becomes identical with that of the conjunction.

Of these three parts of speech, the explanation constitutes the obscure, the transcendental, the mysterious part of the art and science of universal grammar. In relation to the other parts of speech, the relation they bear (*i. e.* which their imports respectively bear) to the imports of the other parts of speech, viz. the substantive, the adjective, and the verb, resembles that which, by the signs employed in algebra, is borne towards the signs employed in common arithmetic. When the signs employed in algebraic arithmetic are all of them translated into the signs employed in common arithmetic, those employed in common arithmetic being, at the same time, reduced to one simple uninterrupted line of numeral figures, the import of the algebraic signs is completely understood, and the problem for the solution of which they have been employed is solved. In like manner, when of a sentence of which a preposition, an adverb, or a conjunction, makes a part, the equivalent is given in a sentence in which no part of speech other than a substantive, a verb, and an adjective, or some other substantive, is employed,—then, and then only, is the import respectively attached to these mysterious parts of speech at once clear, correct, and complete.

For bestowing upon the imports respectively attached to these several mysterious parts of speech, the above-mentioned desirable properties of clearness, correctness, and completeness, the following are the logical operations which have presented themselves as requisite to be performed in relation to them:—

1. Denomination; *i. e.* giving to them respectively, and to each separately, or to each aggregate composed of several together, an appropriate name or denomination.

2. Systematization; *i. e.* placing the several denominations, when so constructed, as above, in systematic order,—*i. e.* by a division made of the respective universal *trunks*, being the names of the several *genera generalissima*, preposition, adverb, conjunction, performed, in each instance, as far as it can be pursued with advantage, in the exhaustive or bifurcate mode, whereby their several relations of agreement and disagreement to and with each other will be brought under the eye at one view.

3. Exemplification,—*i. e.* exhibiting a proposition or sentence of the sort of those in common use, in the texture of which several words belonging respectively to the above-mentioned genera generalissima, shall respectively be employed.

4. Paraphrasis,—*i. e.* for the explanation or exposition of each such proposition, or sentence exhibiting another which shall present exactly the same import, but without containing in it a word belonging to the part of speech thus undertaken to be expounded.

As in every instance in the paraphrasis, or paraphrastical proposition, or sentence thus brought to view, a more or less considerable number of words will be contained, while the word thus requiring to be expounded is but one (except in a few instances in which two are so put together as to form, as it were, but one) on this consideration the paraphrasis may be termed the development.

SECTION II.

*Of Prepositions.**

This part of speech is employed to give intimation of the existence of some relation as having place between two or more entities, real or fictitious, determinate or indeterminate.

SECTION III.

Of Adverbs.

For giving expression to the import of the adverb, a single word is, in every instance, sufficient. Observing that the sign was thus simple, and looking no further than the sign, the ancient grammarians, and after them their worshipper, Hermes Harris, took for granted that the thought, that the import of which they found it the sign, was equally simple.

It is, however, a composite part of speech. In the import of the adverb, three distinguishable imports have been found contained,—being those of the three simply significant parts of speech above brought to view, viz. the substantive, the adjective, and the preposition. *Here*, i. e. in this place;—*Now*, i. e. at this time;—*Sweetly*, i. e. in a sweet manner.

* See note * to p. 348, supra.

Digitized by Google

Of these elementary imports contained in a part of speech, the import of which is in this instance complex, the exhibition may be termed its development.

Upon the principal classes into which this part of speech may be distinguished, this operation will be endeavoured to be performed.

But in the first place it will be necessary to mark out these classes.*

Section IV.

Of Conjunctions.

By the same immaturity of mind, and want of penetration, by which the grammarians, Greek and Latin, and their above-mentioned worshipper were prevented from seeing into the import of the adverb, they were prevented still more naturally from penetrating into the import of the conjunction. In the days of those ancients the star of Locke had not risen. In the days of their idolater Harris, that star had risen, but his idolatry had shut his eyes against its light.

A conjunction is a word by which sentences are tied together. True,—but of the ligament thus employed what was the nature?—what the texture? Was it like the noun-substantive simple, expressive of one object or subject, and no more than one? or was it not rather complex? and if complex, what were the links or filaments of which it was composed?

Examining it with the eye of a grammarian, and among grammarians of an etymologist, Horne Tooke discovered that the conjunction was always some element of the complex aggregate part of speech, a verb. Capital indeed, and highly instructive was the discovery, but at that point it rested.

But of those small words consisting, several of them, each but of one syllable, what is the import? Is the import as simple as the word thus employed as the sign of it? To answer, or so much as to ask the question, may perhaps be regarded as belonging to the province rather of the logician than the grammarian, and into the field of Logic scarcely did Horne Tooke, ingenious as he was, ever attempt to introduce his sickle.

Of the adverb it has been seen that the import is complex, having a number of elementary imports, not fewer than three; but of the simplest species of conjunction the import of the adverb includes no more than a part.

Of conjunctions, in addition to that of adverbs, the development will now be attempted.†

But first in this case, as in that, it will be necessary to bestow upon them an arrangement.

The demand for this part of speech being the same in every language, so far as concerns import, this arrangement and this development will serve for every language.

CHAPTER X.

OF INTERJECTIONS.

Interjections have the import of entire propositions. They may be considered as fragments of the original language,—they are to the human animal what the different species of sounds emitted by other animals are to them respectively,—*ex. gr.* the mewing, the purring, the growling, the spitting of the cat.

Interjections may be termed the *unconstructural* parts of speech;—the others the constructural.

In the interjections may be seen so many remains of the original language common to man and the brute creation;—the language which was in use before the parts of speech were formed, by the decomposition and recomposition of propositions. Every interjection may be considered as the equivalent of some preposition, as, alas! *i.e.* I am grieved,—I experienced a sensation of mental pain. Hurra!—I rejoice, I experience a sensation of mental pleasure.

* This project does not appear to have been completed.—*Ed.*

† This project also appears not to have been completed.—*Ed.*

Digitized by Google

NOTE BY THE EDITOR

ON

THE TRACTS ON POOR LAWS.

THE following tracts which have all been previously printed, (though the last in order, is now for the first time *published*,) bear internal evidence that they are only a portion of what the author has written on the subject of the poor laws; he left behind him indeed a considerable number of unpublished MSS. on the subject, which on some future occasion may see the light. From the Annals of agriculture, it does not appear how far the queries there promulgated, from the answers to which the author intended to fill up the outline of his great work on pauper management, were responded to. In vol. xxix. of the Annals, (p. 556,) the Editor makes an earnest appeal to his readers on the subject, and expresses a hope that "the country gentlemen, and resident clergy, who can with so much ease satisfy many, if not all of his [Bentham's] inquiries, will take the small trouble of sending him the particulars he requests for the parish at least in which they reside;" but it is probable that few of the persons able to supply the requisite information comprehended his enlightened views, and he seems not to have met with sufficient encouragement to induce him even to complete his outline.

It has been the practice of the Editor, on the occasion of the state of the law as it existed when the author wrote being animadverted on in the text, to mention in a note any changes that may have since taken place by statutory or other authority. In the present instance, however, the vastness of the alterations which have been made in the administration of the poor law, and especially in relation to the features chiefly noticed in these tracts, rendered it impossible to accomplish this object without introducing more extensive notes, than readers, who have so many other means of being acquainted with the subject, would have felt of service. The chief administration is, in the plan proposed by Bentham, in hands quite distinct from those in which it has been placed by the poor law amendment act: but the two systems agree in the principle of centralization. In the minutiæ of the plan so far as they are indicated in the ensuing outline, the reader will find many arrangements identical with those, of which the practical experiments, on which the new poor law is based, have led to the adoption; while many of the practical abuses attacked by the author, such as the system of settlement, the facilities for obtaining relief without submitting to labour, &c., have been duly acknowledged and rectified. But perhaps the most remarkable illustrations of the author's practical sagacity, are to be found in his anticipations of the civilizing benefits of such alterations as he suggests; benefits which may have then appeared as the wildest Utopianism, but which have of late been on so large a scale, practically and speedily realized. A comparison of the effects which the author expects to arise from his plans of juvenile training and apprenticeship, may be viewed as a text, of which the report on the training of pauper children presented in the year 1841 to the secretary of state by the poor law commissioners, may be considered as forming a series of practical illustrations.

Digitized by Google

TRACTS

ON

POOR LAWS

AND

PAUPER MANAGEMENT.

BY JEREMY BENTHAM.

NOW FOR THE FIRST TIME COLLECTED.

Digitized by Google

CONTENTS.

Page

SITUATION AND RELIEF OF THE POOR, (*Addressed to the Editor of the Annals of Agriculture* - - - - - 361

OBSERVATIONS ON THE PAUPER POPULATION TABLE 362

OUTLINE OF THE NON-ADULT VALUE TABLE 365

OUTLINE OF A WORK ENTITLED PAUPER MANAGEMENT IMPROVED.

BOOK I.—POLITICAL ARRANGEMENTS.

Sect. 1. Managing Authority, 369—§ 2. General Scheme of Provision, ib.—§ 3. Ways and Means, ib.—§ 4. Constitution, 370—§ 5. Coercive Powers, ib.—§ 6. Land-purchasing Powers, ib.—§ 7. Obligations, ib.—§ 8. Restraints, 371—§ 9. Order of the Dividends, ib.—§ 10. Provision for existing Interests, 372—§ 11. Director's Oath, ib.

BOOK II.—PLAN OF MANAGEMENT.

CHAP. I.—CLASSES MUSTERED (omitted—see note, p. 372.)

CHAP. II.—SEPARATION AND AGGREGATION - 372

CHAP. III.—BUILDINGS AND LAND - - 373

Sect. 1. Size, Number, and Distribution of the Industry-houses, 373—§ 2. Plan of an Industry-house, with its Appurtenances, 374—§ 3. Approach, and out-lying Cottages, 377—§ 4. Means of Separation, 378—§ 5. Means of Extension, 379.

CHAP. IV.—PRINCIPLES OF MANAGEMENT - 380

Sect. 1. MANAGING HANDS—Means, 380—§ 2. MANAGING HANDS—Motives, ib.—§ 3. WORKING HANDS—Employment, 381—§ 4. WORKING HANDS—Motives, 383—§ 5. WORKING HANDS—Fare, 384—§ 6. DEAD-STOCK, 385—§ 7. NON-ADULT HANDS, ib.

CHAP. V.—OFFICIAL ESTABLISHMENT - 386

Sect. 1. Officers—Numbers and Functions, 386—§ 2. Pay, ib.—§ 3. Powers and Restraints, ib.—§ 4. Encouragements, ib.—§ 5. Visiters, 387.

CHAP. VI.—DIET - - - - - 387

CHAP. VII.—CLOTHING, BEDDING, &c. - 388

CHAP. VIII.—EMPLOYMENT - - - 389

CHAP. IX.—CHILD-NURSING - - - 391

CHAP. X.—BOOK-KEEPING - - - ib.

CHAP. XI.—APPROPRIATE ESTABLISHMENTS 394

CHAP. XII.—PAUPER EDUCATION - - 395

BOOK III.—COLLATERAL BENEFITS.

INTRODUCTION - - - - - 397

CHAP. I.—EMPLOYMENT SECURED - - ib.

CHAP. II.—MENDICITY EXTIRPATED - 401

Sect. 1. Compulsion Indispensable, 401—§ 2. Compulsion Justifiable, ib.—§ 3. Plan for the Apprehension of Beggars, ib.—§ 4. Provision after Discharge, 402—§ 5. Evasions Obviated, ib.—§ 6. Almsgivers Unpunishable, ib.—§ 7. Existing Remedies Incompetent, ib.

CHAP. III.—HABITUAL DEPREDATION EXTIRPATED 403

Sect. 1. Measures, 403—§ 2. Proof of Habitual Depredation, 404—§ 3. Families of Disreputable Classes, ib.—§ 4. Efficiency of this Plan, 405—§ 5. Ulterior Securities, ib.—§ 6. Existing Law Incompetent, ib.

Page

CHAP. IV.—TEMPORARY INDIGENCE RELIEVED 406

CHAP. V.—FRUGALITY ASSISTED - - 407

Sect. 1. Exigencies of the Poor, 407—§ 2. Sources of Funds in Store, ib.—§ 3. Difficulty of Hoarding, 408—§ 4. Properties to be wished for in a System of Frugality-Banks, ib.—§ 5. Plan for a System of Frugality-Banks, 409—§ 6. Friendly Society Banks Inadequate, 410—§ 7. Exigencies to which the Company's Bank is least Competent, 414.

CHAP. VI.—PECUNIARY REMITTANCE FACILITATED TO THE POOR - - - - 417

CHAP. VII.—DISTANT CONVEYANCE FACILITATED TO THE POOR - - - - - ib.

CHAP. VIII—IMPRISONMENT RENDERED UNEXPENSIVE AND REFORMATIVE - - 418

CHAP. IX.—DOMESTIC MORALITY ENFORCED - 419

CHAP. X.—NATIONAL FORCE STRENGTHENED WITHOUT EXPENSE - - - 420

Sect. 1. Land Force, 420—§ 2. Naval Force, 421—§ 3. Naval Timber, ib.

CHAP. XI.—RATE OF INFANT MORTALITY DIMINISHED - - - - - 421

CHAP. XII.—USEFUL KNOWLEDGE AUGMENTED AND DISSEMINATED - - - - 424

CHAP. XIII.—VOLUNTARY CHARITY ASSISTED AND DIRECTED - - - - - 428

BOOK IV.—PAUPER COMFORTS.

Sect. 1. Introduction, 430—§ 2. COMFORTS OF COURSE; extended to all Classes, together with the several Points of Management from which, as from their EFFICIENT CAUSES, they may respectively be expected, ib.—§ 3. APPROPRIATE COMFORTS; extended by Special Care to Classes ordinarily bereft of them, 432—§ 4. EXTRA COMFORTS; to be imparted to more or fewer, according to Claims, Means, and Opportunities, 433—§ 5. Funds and Grounds of Title in regard to Extra-comforts, 434.

*** In the Outline as announced in the Annals of Agriculture, the following Books, and corresponding Chapters, are given in the Contents, but are not filled up—see Note to p. 439:—

BOOK V.—FINANCIAL GROUNDS.

CHAP. I.—POPULATION EXPECTED.

CHAP. II.—PECUNIARY ESTIMATES.

CHAP. III.—PROVISION FOR EXISTING INTERESTS.

CHAP. IV.—ADVANTAGES TO GOVERNMENT.

CHAP. V.—PROSPECTS OF SUCCESS.

CHAP. VI.—DEFICIENCIES IN SUBSCRIPTION CAPITAL, HOW SUPPLYABLE.

BOOK VI.—CONSTITUTION DEFENDED.

CHAP. I.—MANAGEMENT, WHY IN ONE AUTHORITY, NOT SEVERAL.

CHAP. II.—MANAGEMENT, WHY IN A COMPANY, NOT GOVERNMENT.

CHAP. III.—AUTHORITIES UNCONNECTED, AS WELL AS UNINTERESTED, STILL MORE INCOMPETENT.

OBSERVATIONS ON THE POOR BILL INTRODUCED BY MR PITT.

CHAP. I.—INTRODUCTION - - - 440

CHAP. II.—UNDER ABILITY, OR SUPPLEMENTAL-WAGES CLAUSE - - - - 441

CHAP. III.—FAMILY RELIEF, OR EXTRA-CHILDREN CLAUSE - - - - 444

CHAP. IV.—COW-MONEY CLAUSE - - 446

CHAP. V.—RELIEF EXTENSION, OR OPULENCE RELIEF CLAUSE - - - - 449

CHAP. VI.—APPRENTICESHIP CLAUSE - - 452

Essay on the question—who are the persons for whom the several bounties provided by this Bill are intended - - - - - 457

Digitized by Google

Digitized by Google

circumstance—will, i
inference is—that eve
either as virtuous or
of pure coercion or p

(*f*) CLASSES XIV
denomination of the
that of the DISREPU
demand for Relief (*u*
son more cogent than
care of for their own
of the community at l

Digitized by Google

SITUATION AND RELIEF OF THE POOR.

By JEREMY BENTHAM, Esq.

ADDRESSED TO THE EDITOR OF THE ANNALS OF AGRICULTURE.

Queen's Square Place, Westminster,
8th September, 1797.

Dear Sir,—It was but t'other day that I became master of a complete series of your Annals:—accept my confession, and record my penitence. Having, on my return from my long peregrination on the Continent, lent to a friend—who had lent to another friend, whom we neither of us could recollect—the twenty-five or thirty numbers which I had taken in before that period, I postponed from time to time the completion of the series, in hopes of recovering the commencement of it. When at last shame and necessity got the better of procrastination, what a treasure of information burst upon me!—No—so long as power without——and without——shall have left an annual guinea in my pocket (blanks are better here than words) not a number of the Annals shall ever be wanting to my shelves.—Hold! —don't take me for a Jacobin, now; nor even for a croaker—What I allude to, is not any *common* burden—such as you land-owners and land-holders grunt under:—but my own ten thousand pound tax—my *privilegium*—a thing as new to English language, as it is to English practice—sole and peculiar fruit of the very particular notice with which I have been honoured by — ——.

This waits upon you with a proof of a blank Pauper Population Table: being a Table framed for the purpose of collecting an account of the Pauper Population in as many parishes, &c., as I may be able to obtain it from. Knowing so well your zeal for all zeal-worthy objects, and mindful of your often experienced kindness, I cannot on this occasion harbour a doubt of your assistance. But in what shape will it be most convenient and eligible for you to give it me? Will you reprint the *heads* alone, upon the plan of common letter-press, and without the form of a table? or will you accept of an impression, of the same number as that of the Annals, for the purpose of annexing a copy to each copy of your next number? This latter expedient, should it meet with your approbation, would lessen in a considerable degree the trouble to any such gentleman as may be disposed to favour me with their contributions.

Is it worth while to give the Table this indiscriminate kind of circulation? At any rate, your Editorial Majesty will I hope be pleased graciously to grant unto me your Royal Letters—*patent* or *close*, or both, addressed to *all* —and, if need be—*singular*, your loving subjects, my fellow-correspondents;—charging and exhorting them, each in his parish—and as many other parishes as may be—to fill my Tables, and send in their contributions.

Along with the Table you will find a MS. paper, exhibiting the importance of the information I am thus labouring to collect: you will print it in your Annals, or suppress it, as you think best. The danger is, lest there should be some, who, though they might otherwise have been disposed to furnish the information desired, may perhaps shrink back at the idea of the applications that might be made of it to the economy of the parishes in the management of which they may respectively happen to be concerned. A gentleman, who bears a principal part in the management of one of the great London parishes, had with more than ordinary alacrity consented to a general request of information. I sent him a pair of Tables, and (though this account of the use was not with them) he returned them with an excuse.

I also send, in MS., a *Table of Cases calling for Relief*:—a general Map of *Pauper-Land*, with all the *Roads* to it. Few, if any, of the projects I have seen, but what have appeared (the *arch-project* not excepted) to bear an exclusive—at least a *predilective*—reference to some of these cases, overlooking or slighting the rest. I send it in the state in which I propose printing it for my own book; but, in the meantime, if it be worth the honour of a place in the *Annals*, it is altogether at your service. This preparatory insertion will turn to the advantage of the work itself, if any of your Correspondents (not forgetting their Editor) would have the goodness to contribute their remarks to the emendation of it. You will not easily conceive—few heads, at least, but yours are qualified to conceive—the labour it has cost me to bring the two Tables to this state. As to the work at large, it will occupy two independent, though connected, volumes. *Pauper Systems compared*:—*Pauper Manage-*

Digitized by Google

ment improved;—the last the Romance, the Utopia, to which I had once occasion to allude. —Romance!—how should it be anything *less*? —I mean to an Author's partial eyes. In proportion as a thing is excellent, when established, is it anything but *romance*, and *theory*, and *speculation*, till the touch of the *seal* or the *sceptre* has converted it into *practice*?—Distress, at least—distress, the very life and soul of Romance, cannot be denied to mine: for in this short and close-packed specimen, already you behold it in all its shapes.—Magnanimous President!—accomplished Secretary!—Ye, too, have your Romance.—Heaven send you a happy catastrophe, and the *fettered Lands* a "*happy deliverance!*"—Patience! patience!—Ye, too, before you are comforted, must bear to be tormented.

Apropos of Presidents—the *High Priest of Ceres* having divined, or not divined, my recent occupations, has been pleased to send me a mandate in form, summoning me to devote myself to this branch of his Goddess's service, that the fruits of my labours may be consecrated in her Temple at Whitehall:—so that, whatever other requisites may fail me, I shall be in no want of *auspices*. Continue yours to me;—and believe me, with the most serious respect,

Ever your's,
JEREMY BENTHAM.

ARTHUR YOUNG, Esq., &c. &c. &c.

OBSERVATIONS ON THE PAUPER POPULATION TABLE HEREUNTO ANNEXED.

Showing the novelty, as well as use and importance, of the information that would be afforded by a set of Tables, one or two from every Parish or other Pauper District, filled up upon the plan of the blank Table here exhibited.

THE stock of information here in question constitutes what will be found to be an indispensable groundwork to every well-digested plan of provision that can be framed in relation to the Poor. For some of the classes a peculiar *mode* of *provision* is requisite, different as between class and class; as in the case of *infants, lunatics, idiots*, the *deaf and dumb*, and the *blind*. The rate of *neat* expense per head, as between class and class, is also susceptible of a very extensive scale of variation: the *quantum* and *value* of *return*, actual or possible, in the way of *labour*, by the produce of such labour, is again susceptible of a scale prodigiously more extensive.

1*st*, To consider the variation where *infirmity*, whether of *mind* or *body*, is the constituent character of the class. In the case of *lunatics*, for example, the average rate of expense per head is probably double, at least, to what it is in the case of a person of sound mind, and of the same age, able or not able to work:* profit by labour of course nothing:—yet in a set of *appropriate* establishments, set apart for the reception of persons of this class, not only might the expense per head be reduced to the ordinary level, but in many instances a quantity of profit might (it is supposed) be extracted from their labour, to the advantage of the individual himself, in the way of medical relief, or even cure, no less than of the public in the way of economy: an observation which, as far as *economy* is concerned, applies in a greater or less extent to the *other* classes above exemplified; viz. *idiots*, the *deaf* and *dumb*, and the *blind*; to which may be added the various sorts of *cripples*.

So again, where the variation in point of neat expense has no other cause than the difference between *age* and *age*. In the case of a *full-grown* person, capable or not capable of work, (to take the *male* sex, for instance,) the amount of necessary *expense*, everything included, may, when compared to the case of a child of three or four years old, rise perhaps to *twice* as much; while, on the other hand, in the case of an individual of the same sex, possessing an ordinary degree of ability in regard to work, and full grown, whether arrived or not at what is properly termed the age of *manhood*, the capacity of affording, in the shape of labour, a *return* for the expense, (I speak of mere *natural* capacity,) may be from sixteen to twenty times as great as in the child; even supposing the child to stand already upon the *working* list, and to be earning every day a sum worth taking into the account; and therefore, when compared with a child not yet set to work, the capacity of the man, or full-grown boy, may be as sixteen or twenty to nothing.

Between these two extremes in the scale of profit and loss, there will be a series of perceptible gradations, at least as many as there are between year and year of age: insomuch that, although the total number of a parish stock of pauper boys were known, no tolerable calculation could be made of the quantum of

* In St George's and St Andrew's, Holborn, for example, no less than 8s. a-week for board and attendance.—This was in the year 1791; when the average expense of an ordinary pauper was, in the same establishment, not so muchas 1s. 10d. a-week, —£4, 15s. 3d. a-year. In the country, in some of the parishes reported by Sir Frederick Eden, 4s. a-week; in others, 3s. 6d.

Digitized by Google

Digitized by Google

Digitized by Google

profit or loss capable of being derived, or likely to accrue, from that stock, unless the proportions in which that number is divided betwixt the different ages were known, not less than a year being taken for the interval between age and age.

Simple and incontestable as these truths, when once pointed out, may appear, so imperfect are the advances as yet made in the arts of *management* and *book-keeping* in this line, that in no instance that has yet been made public, has any complete statement been ever given, in the accounts of any house of industry, or other poor-house, of the different varieties of condition in respect of *infirmity*, *birth*, *parentage*, &c., as expressed in this table: and in regard to *age*, the distinctions made have seldom gone beyond those between *men* and *women* on the one hand, *boys* and *girls* on the other; or, if anything has been said of *age*, the distinctions have been so few, that little, if any, additional information has been to be collected from that source.*

Distinctions thus loose will be apt to mislead rather than to inform. Individuals between whom there shall exist no difference at all, in respect either of profit or loss, are thus ranked under *different* classes; while individuals between whom the difference in respect of profit and loss stands at the very highest pitch, as 8 or 10 to 1, or as 8 or 10 to 0, are ranked under the *same* class. A *boy* of twenty shall earn quite as much, as well as consume as much, as a *man* of twenty-one. The same *boy* shall consume twice as much as another *boy*, the boy of three or four years old, for example: at the same time that, while he is *costing twice* as much, he might, on the other hand, be made to *earn* from sixteen to twenty times as much; the earnings of the boy of twenty years old rising as high as eight or ten shillings a week: while, for the boy of three or four years old, if he earns anything, sixpence may be full pay. True it is, that where (as above supposed) there happens to be *profit* as well as *loss*, *earnings* as well as *maintenance*, so that the account has *two* sides, whatever error there may be on the side of *loss*, will operate, as far as it goes, in *compensation* of the error on the side of *profit*. But where the *capacity* of yielding profitable labour is *wanting*, (as in many individuals in each parish,) or not *improved* into *act*, so that there is nothing on the profit side of the account, (as in most parishes,) whatever error results in regard to the expense of maintenance stands single and uncompensated; and, on the other hand, where there *is* something on the profit side of the account, the error may, instead of two hundred per cent. as in the other case, rise as high as eight hundred or a thousand per cent.

Such being the difference in point of value, as betwixt *boy* and *boy*, (laying aside, for shortness sake, *men*, *women*, and *girls*,) observe the difference that may result in the *boy account*, as between *parish* and *parish*.

Take two parishes, *Bigham* and *Littleton*—numbers of every class the same in the one as in the other. Not to have recourse to any such extraordinary supposition, as that at *Littleton*, they shall be, all of them, below (what, if the expression be allowable, may be termed) the *workable* age, and therefore yielding *no* earnings at all—at *Bigham*, all of them at the age of *highest* earnings; let us suppose that at *Littleton* those *below* the workable age and those *above* it being put together, the capacity of affording profitable labour is, upon the whole stock together, the same as if the whole was at the *lowest* workable age: while at *Bigham*, that capacity is upon the same footing as if the whole stock were at the age of *half* earnings; viz. the age at which, instead of earning from 8s. to 10s. as before, a boy *might* be made to earn from 4s. to 5s. All this being supposed, observe the errors it is likely to give birth to, as well in regard to the quantity of *natural strength*, as in regard to the goodness of the *management*, as between house and house. The number of boys being the same in the one as in the other, if in *Bigham* the sum of the earnings were from four to five times as great as in *Littleton*, (ages being by the supposition unknown,) the management under this head would naturally appear *four* or *five* times as good: whereas, in fact, it is not above *half* as good; for, had it been equally good, the *actual* earnings would have been as the *capacity* for yielding earnings; whereas they are but half as great.

In the pecuniary value, *positive* or *negative*, of the individual, there is another ingredient in respect of which this lumping distinction, between *men* and *boys*, affords no sort of light; nor will any division, of less minuteness than that into *years of age*, be sufficient to the purpose. The value of a child, in this point of view, will depend not only upon the *present* value, positive or negative, but upon the quantity of *negative* value *past*, and the quantity of *positive* value yet *to come*. Suppose fourteen years the age at which boys go off in both places, and let the total pecuniary value of the stock of hands (take it either in regard to *ac-*

* The information here called for, new as it is to pauper economy separately considered, constitutes, it is true, but a small portion of the statistical matter that would be exhibited by a *Census*, constructed upon the excellent plan contrived and exemplified by that indefatigable philanthropist Mr William Morton Pitt. But, besides being the part the least difficult to collect, it is the only part directly applicable to that portion of the population, the concerns of which I have ventured to take in hand.

A few of the distinctions that will be found here do not appear upon his Table; the parish which was the theatre of his operations, not affording exemplifications of them: as to the rest, whatever lights may be found here are but *borrowed* lights, drawn from that most respectable source, collected into a focus, and thrown upon this particular spot.

Digitized by Google

tual earnings, or in regard to the *capacity* for yielding earnings) be equal in both places. Yet, for a period of six or eight years, the difference may be prodigious. At *Bigham* the positive part of the value may be derived—the earnings obtained—from a set of boys, who, wanting but a few weeks or days of fourteen years of age, are on the point of going off, (the rest being composed of boys below, or little above, the commencement of the *workable* age.) This elder part of the stock being gone, the value may sink to little or nothing; and so remain, even for years: while, in *Littleton*, the same value shall be afforded by a stock of boys of no more than seven or eight years old; whose value will, for six or seven years to come, be every year on the increase.

Averages (it may be said) may be taken.—Yes, so they may, with the benefit of proper *data*; but those *data* are wanting here. When a *series* is given, composed of terms having a common *difference*,—a first and last term consequently given,—the middle term gives the average. Here the *lowest* term *is* given, it is true; it is the day of birth—number of *years* 0, in all places: but the *highest* term, the highest age up to which a boy, sound in mind and body, stays upon the parish, is *not* given. What this highest age is in general, we do not know. It is as high again in some parishes as in others; and averages will not do here. In one parish, children shall go off at eight, seven, and six years old; in another, not till fourteen, fifteen, or even sixteen years old. We know, in general, that the differences in this respect are very great; but what they amount to we do not know. To suppose—first a lowest term—then a highest term—then an equal number of each—or a regular series from the one to the other—and *so* strike an average, would be altogether a random shot.

These (it may be said) *are extreme cases, and not likely to have place anywhere.*—Admitted: nor are they given but as extreme cases: they are given as the utmost limit to which error can extend itself. But below this improbable degree of aberration, how many other, yet still high degrees, are there, that *are* probable?—A difference—an error, to the amount of cent. per cent. can scarcely be stated as improbable. But what would be the fate of that mercantile adventure, in which as much capital again as was necessary had been expended, or not above half as much as was necessary had been provided; or which, in return for that advance had reckoned upon twice as much labour as the establishment had afterwards been found capable of affording, and this for many successive years.

For my own part, I must confess, I am unable to conceive how any plan of general economy in this line can rationally be attempted, without something like an estimate of the *mouths* to be fed, as well as of the *hands* to work with.

To give an idea of one general application, which I propose to make, of whatever information I might be fortunate enough to obtain, I will subjoin a sketch of a table I have been attempting to frame, and which for shortness might be styled the *Non-Adult Value Table.*

As to the particular uses that might be derived in *practice* from the information thus particularized, the case of *lunatics*, and other *infirm* classes, has already afforded *one* example. Among *infants*, the *destitute* class, comprehending bastards, orphans, foundlings, and deserted children, may afford *another*. Of these, no inconsiderable share of the whole pauper population would be found to be composed. Upon an average taken from the pauper population of a considerable number of parishes, bastards alone composed about a *ninth*.

Under a certain age, none of the individuals thus denominated being capable of any special attachment to person or to place, nor any other individual being likely to possess any very special attachment with regard to *them*, this absence of natural connexion might afford room for transferring them, without hardship, and in any numbers, to any proper situation or situations, if the state of the laws were such as to admit of such an arrangement, and the interest of the public, in point of economy or any other head of advantage, with reference either to the public or to the children themselves, were to demand it. During the age of *sheer expense*, for example, transference to a situation where the *expense of maintenance* is at the *lowest*: at the age of ability, or commencing ability, with regard to labour, transference to situations where the demand for labour is at the *highest*.

Thus much for illustration, and for illustration merely. To exhibit this or that arrangement as a proper one, would be to insert, into a petition for materials, the work itself for the construction of which they are desired. Advantages crowd in on one side, objections on the other; but this is not a place for striking the balance.

Were the several other classes to receive, each of them, a separate consideration in this view, many other proofs would appear of the importance of the information sought for by these tables; but the subject could not be thus exhausted, without plunging into the details of the particular plan, for the purpose of which these tables were contrived.

As it is, two points appear sufficiently established:

1. One is, that, whether quality or quantity of the demand in the way of supply for maintenance—or prospect of return in the way of labour—or quality or quantity of the demand in respect of the stock of requisites for the extraction and application of that labour—be considered, no well-grounded plan of provision, in relation to the pauper community, can be framed, without the stock of information sought for by these tables.

Digitized by Google

2. That no such stock of information has ever *hitherto* been obtained, or at least made public, from any ONE place, much less from any assemblage of places, considerable and various enough to be considered as affording an adequate sample of the pauper population comprised within the territorial authority of the poor laws.*

Numbers I infer from *expense:* total numbers of the whole pauper population that *would* be to be provided for, from the known totals of *past* expense, compared with expense per *head* as far as it can be ascertained: then say —as the total of the pauper population, in any set of pauper districts, according to the tables when filled up for those districts, is to the total of pauper population in the whole number of such districts in South Britain, so are the numbers of the several *classes*, in the same *parts* of the country taken together, to the numbers of the same classes in the *whole*.

OBSERVATIONS ON THE TABLE OF CASES CALLING FOR RELIEF, HERETO ANNEXED.

Pauper-Population-Table—Table of Cases calling for Relief: Why make *two* tables?—why not give the matter of both in *one?*

Answer—The *Pauper-Population-Table*, being contrived for a particular purpose—that of collecting information—such classes, and such only, were inserted in it, as afforded a hope, that the numbers of each might be found capable of being collected. A minute investigation, of the difference between two tables framed for different purposes, would be of little use: the general account of the matter is this. The classes, of which the respective numbers are here inquired after (the classes comprised in the Pauper-Population-Table) compose what may be considered as the *permanent* stock of pauper hands: in the *Table of Cases calling for Relief* are designed to be comprised *every* class, and every individual that can ever enter into the composition of the general mass:—the *coming-and-going* stock, as well as the *permanent:*—the *able-bodied*, as well as the *infirm:*—those who, under the existing order of things, come in but for *casual relief;* as well as those who, under the system of *community-maintenance*, are *constantly* in the *House;* and those who, under the system of *home-maintenance*, are *constantly* upon the list of *pensioners*.

A single glance at the Table of Cases calling for Relief, will be enough to show, that among the classes there exhibited, there are more than one, of the respective numbers of which no general returns could reasonably be expected. Such are all the *degraded* classes; those whose condition shuns the light; reputed *thieves*, and other *depredators—deserters—beggars—prostitutes*.

To state the particular use, the contemplation of which gave birth to each distinction, would be to state the particular plan of provision in contemplation for each class:—to state the particular plan of provision in contemplation for each class, would be to give the entire work of which this paper is but an offset. Thus much, however, may be observed, that, of all the classes there distinguished, there is not one, the circumstances of which have not in the framing of the plan of provision been specially taken into account.

OUTLINE OF THE NON-ADULT VALUE TABLE.

Contrived for the purpose of exhibiting (whenever the requisite data *can be obtained) the pecuniary value, negative or positive, of the service of a pauper, or other individual (*i. e. *expenses and returns by labour on account of such individual)* at *and* up to *different* years of age, *from birth to twenty-one years complete.*

I. DATES AND AGES.

Column 1. Day, month, and years of our Lord —twenty-one in number—taking a determinate period for the sake of illustration: viz. from 1st January, 1800, to 31st December, 1820, both inclusive. N.B. For some purposes it may be found of use to divide the whole term into *half-yearly* instead of yearly periods—Say, then, half-yearly.

Column 2. Correspondent column of half-years of age: viz. from birth to half a year old; from half a year to a year; and so on.

II. EXPENSES TO BE PROVIDED FOR, WHICH, AS FAR AS THEY GO, GIVE THE VALUE NEGATIVE.

Column 3. Expense of diet

Column 4. Ditto, clothing—*materials*.

Column 5. Ditto, ditto, *making*.

Column 6. Ditto, ditto, *washing* and *mending*.

Column 7. Individual's share in the *common* and *indivisible* expenses of the establishment.

Column 8. Totals of expense (to be provided for before hand) during and *for* the several half-years commencing on the several days.

Column 9. Totals of expense from birth *up* to last days of the several ages; *i. e.* up to the

* Among the highly valuable collections of Sir Frederick Eden, are *Censuses* of the Pauper Population of thirty-one Parishes. Unfortunately there are few, if any, of them applicable to this purpose. After a string of individuals distinctly characterized comes a "family," number of members not mentioned. Age, likewise, though in most instances given, is in several instances omitted. *Proportions* taken from such *data* would evidently be false; the uncertainty that envelopes particular articles communicating itself to the whole.

Digitized by Google

ends of the several half-years commencing on the several days.

III. RETURNS TO BE EXPECTED, WHICH, AS FAR AS THEY GO, MAKE THE VALUE POSITIVE.

Column 10. Earnings *for* the several half-years commencing on the several days.

Column 11. Earnings from birth *up* to the ends of the several half-years, commencing on the several days.

IV. BALANCES WITHOUT ALLOWANCE FOR DEATH OR SICKNESS.

Column 12. Balance of expenses and returns *for* the several half-years commencing on the several days; giving the value, whether *positive* or *negative:* negative, of course, for the first years; positive, if at all, not till after a number of years.

Column 13. Balance of expenses and returns, from birth *up to* the ends of the several half-years commencing on the several days; giving at first a negative value, then perhaps a positive value, as before.

Column 14. *Present* clear value of the service of a pauper (or other) hand; on the supposition of its being to be performed during the several half-years of age commencing on the several days:—Value, at first negative, then positive, as before. By *present* is meant on the day of the commencement of the term; viz. 1st Jan., 1800; supposing the future profit or loss were to be contracted for on that day.

Column 15. Present clear value of the *whole* period of service *up to* the ends of the several half-years commencing on the several days.

V. RATE OF MORTALITY ASSUMED FROM A STANDARD TABLE.

Column 16. Number of *influents** into the respective half-years of age—(Number of influents into age stated, for the purpose of calculation, at 1000 or 10,000.)

Column 17.* Number of *decrementalists (effluents* by death) dying, according to the standard-table, in the course of the several half-years of age.

Column 18. Number of *remanents* at the ends of the several half-years of age.

VI. BALANCES AFTER ALLOWANCE FOR DEATH AND SICKNESS.

Column 19. Present value (deduced from the above standard-table) of the half-year's service of a pauper taken at the several ages, and supposed to accrue at the end of the several half-years commencing on the several days;—allowance made for the chance of *death*, according to the foregoing standard-table.

Column 20. Present value of the *whole period* of service from birth *up to* the ends of the several half-years, commencing on the several days; allowance made for the chance of death, as before.

Column 21. Present value of the half-year's service of a pauper, taken at the several ages, and supposed to accrue at the end of the several half-years commencing on the several days;—allowance made for the chance of death and *sickness*. (The chance of *sickness* taken from Dr Price.)

Column 22. Present value of the *whole period* of service, from birth *up to* the ends of the several half-years commencing on the several days;—allowance made for the chance of death and sickness, as before.

Column 23. Values, *at* the several *successive* ages of the whole of the period of service, *remaining* at these respective ages;—allowance made for death and sickness, as before.

Tables upon this plan, one for each sex, had actually been constructed under my direction; the numbers of the different ages being taken from the *Censuses* reported, as above, by Sir Frederick Eden, and the rate of mortality taken from Dr *Halley's* Breslaw Table, which, on account of the roundness of the assumed number of *influents* (1000) seemed most convenient for the purpose. But (on examination,) the *Census* taken from Sir Frederick Eden being found inapplicable to this purpose, and Dr Halley's table being found to labour under a very material error, not noticed by Dr Price, or any other of the many mathematicians who have made use of it, all the calculations that had been grounded on either of these bases have been given up; and it is to supply the deficiencies thus left that the information described in the blank Pauper-Population-Table is desired.

The value I take from the value of an adult employed at day-work on the lowest paid species of work, (agricultural,) on an average of the whole of South Britain; supposing the value to rise up to that pitch, by equal gradations, commencing at the earliest *workable age*. To get at the average in question I am ransacking, or causing to be ransacked, all the books I can lay hands on, in particular the Agricultural Reports. Your science, were I fortunate enough to have it within reach, might abridge the labour as well as secure the ground. You will recollect my question, to which you were kind enough to send me an answer, about the *maximum* of earnings, in a gradation formed by *age*.

What say you to this idea of forming a valua-

* The term *decrementalists* is derived from Dr Price's expression, "*Decrements of life*," which did not appear to exhibit the simple matter of fact in so clear and unambiguous a point of view. The terms *influents* and *effluents* (analogous to the mathematical terms *fluxions* and *fluents*) have been added, together with the term *remanents*, as being requisite to make up a nomenclature competent to the purpose.

Digitized by Google

tion of that part of the national live stock which has no feathers to it, and walks upon two legs? Is it new or old?—If old, can you tell me where it is to be found? I do not mean in the head of what West Indian, but in the tables of what mathematician or statisticalist? For strange it would be if the term *value* had less propriety when applied to the labour of the freeman than to that of the slave. Is an *average* child at his birth—supposing him certain of not living beyond the age of one-and-twenty years complete—worth *more* or *less* than no*thing* to those (himself of the number) who, during that period of legal, as well as natural, subjection, have the benefit of his capacity for labour at command? If more than nothing, at what age does he become so? Whether worth more or less than nothing, can he, by any, and what means, be made worth more? If worth more than nothing, how comes it that in an *old*-planted country, such as *England*, (whatever may be the case in a *new* planted one, such as *America*,) a child is, in every class without exception, regarded as a burden (I mean always in the pecuniary sense) to its parents? This deficiency in point of value, is it necessary and irremediable, or accidental and remediable? Is it *absolute* or *relative* only, (I mean with *relation* to the *parents*,) or partly absolute and partly relative? In other words, is it that a child has not, by the end of the period in question, produced so much as he has consumed; or that, though what he has produced be *in itself* considerably *more* than what he has consumed, yet, with reference to his *parents*, it is *less*, on account of their having *expended* more of what he has *consumed*, than they have *received* of what he has *produced*? In proposing to you these questions, I give you a clue, which, if it be worth following, will lead you to one of the main pillars of my plan;—an enigma which you, and, if you please, your correspondents, may amuse yourselves with, instead of a *rebus*, or a *mathematical problem* from the Ladies' Diary.

My scale, you will observe, extends no farther than from the bottom to the summit of the *hill of life*: not that either the *Table-Land* at the top, or the descent on the other side, are undeserving of mensuration; but they do not lie within my present department; except the narrow slip at the very bottom, which belongs to *Pauper-Land*.

Amongst the different plans in relation to the poor, you lean, I observe, to that of Mr Ruggles: that being the case, I flatter myself with the pleasure of seeing you and your intelligent friend on my side. His plan is mine:—add only certain sources of *profit*—certain sources of *saving*—certain means of obtaining *capital*—not from the *unwilling*, but the *willing*—certain securities for good *management*—and certain other *et cæteras*, in which the welfare of the pauper community is not forgotten, and which, I hope, you will both approve of.

Some prefer *home*-provision in *toto*: but this will not do for those who have no home; in particular not for the destitute classes of children, for which see the table.

Others prefer *working*, without boarding or lodging, or *working and boarding*, without lodging, to *working, boarding, and lodging*: but this, again, will not do for those sons of indigence who have not where to lay their heads.—Look once more at the table.

Some are for doing everything by *savings* out of *earnings*; but this will not do very well where there can be no savings, still less where there can be no earnings.—Another glance, if you please, at the table.—Bating these cases, the recipe is good for the provident. Unfortunately, the bulk of labouring hands, especially the high-paid ones, is composed of the improvident. Providence may, by proper facilities, (for encouragement is scarcely necessary,) be rendered *more general*; but man must be new made, before it can be made universal.

Some think they annihilate the burden, when, from shoulders that cannot *but* be able to bear it, they shift it upon shoulders that may or may *not* be able to bear it; from shoulders more able, to shoulders less able; or from shoulders that *are* used to it, to shoulders that are *not* used to it: or, when instead of *rate* they write *subscription*:—like the old statute, which, to reconcile the farmer to a set of officers, who plundered him under the name of *purveyors*, ordered them to be called *caterers*. If this does with *poor-rates*, try it upon *tithes*, and call them *offerings*.

One gentleman (for whose probity of intention I would be security, though I have not the honour of his acquaintance) takes the burden from the shoulders of the man of property, and lays it upon those of the man of hard-pressed industry, who, unable to find subsistence among his friends and neighbours, is driven to hunt for it among strangers. An improvement this, at any rate, upon the existing laws; since a tax, so long as it is paid, is less heavy than a prohibition.

In some such ways as these we begin, all of us; and if we did not begin a little at random, how would anything ever be done?

Come, my Oedipus, here is another riddle for you: solve it, or by Apollo!———You remember the penalty for not solving riddles.—*Rates* are encroaching things. You, as well as another illustrious friend of mine, are, I think, for *limiting* them.—Limit them?—Agreed.—But how?—Not by a prohibitory act—a remedy which would neither be applied, nor, if applied, be effectual—not by a *dead letter*, but by a *living body*: a body which, *to stay the plague*, would, like *Phineas*, throw itself into the *gap*; yet not, like *Curtius*, be swallowed up in it.

When I speak of *limitation*, do not suppose that limitation would content me. My *reverend* friend, hurried away by the torrent of his own eloquence, drove beyond *you*, and let drop something about a *sponge*. I too have my

Digitized by Google

spunge; but that a slow one, and not quite so rough a one. Mine goes, I promise you, into the fire, the instant you can show me that a single particle of necessity is deprived by it of relief.

One thing we shall not differ about;—the priority due to agriculture, and the necessary non-productiveness of every system of pauper-employment in which manufactures come in on any other footing than a supplemental one; to take off such part of the *strength* of an establishment, and such part of the *time*, as cannot be employed in producing food for it.

One thing I thank him for—(I should have said Mr Ruggles)—the confirming by his professional science a hope fondly nourished by my ignorance, that under such a system of management, as, if not already exemplified anywhere, might be framed at least for the purpose, employment might be found, even in agricalture, for almost every species of infirmity—for almost every modification of *refuse* labour. Stationary force being found by inanimate, ambulatory by animated Nature, how very little strength, and even how very little practice, is necessary in a *guide!*—and even supposing—what is not the case—there were nothing but girls for the plough, would not even a girl be better employed now and then at the plough, than spinning her health away, and earning twopence?

But away with party—away with exaggeration:—neither clothing nor lodging, any more than food, can be excluded from the catalogue of necessaries. In the principle of *self-supply* behold another of my sheet-anchors: and *that*, after giving two-thirds to agriculture, leaves one for manufactures. The principle of *self-supply!*—what say you to it?—Does the *term* explain itself?—Does the idea recommend itself?—Quit that—especially such part of it as looks to agriculture—and I divide your poor-houses for you—call them what you please—Houses of Industry—Schools of Industry—into two parcels:—one. the ill-managed, employed in ruining *themselves;* the other, the well-managed, in ruining their *neighbours*.—Assertions are not proofs; but announce the theorem—and another time, if it *can* be necessary, you shall have the demonstration.

This (you will say to yourself) is a sad *farrago*—but your miscellany, how superior soever to others in subject-matter and contents, has this in common with them—that half-formed ideas—so they have but matter in them—are not prohibited from presenting themselves. It is part of the character of your correspondents, to have more of *substance* about them than of *form:* and of the many recommendations which join in drawing so much good company to your *conversations*, one, nor that the least, is the convenience of being admitted to it in *boots*. Mine (you will say) have hob-nails in them: for, somehow or other, the very idea of the person to whom I am addressing myself, has insensibly betrayed me into that sort of playful confidence—that *épanchement*, as I think the French call it—which I have always felt in his company. The opportunity of laying plans, before a sort of open committee, in an unripened state, and for the purpose of getting help for ripening them, before they have yet received the form they are to wear when presented at the bar of the public, by which they are to be tried, is a serious advantage; and as such, if you afford me any encouragement, I am not likely to be sparing in availing myself of it.

P.S.—For your next Number, or next but one, I don't know but I may trouble you with a compressed *Sketch* of my *two above-mentioned works*, or one of them:—something between the work at large, and a mere Table of Contents. Imperfect it cannot but be, were it only for want of the *data*, the obtaining of which is the principal object of the trouble I am giving you at present.

Digitized by Google

OUTLINE OF A WORK

ENTITLED

PAUPER MANAGEMENT IMPROVED.

To be filled up, and the work published in one volume octavo, as soon as a sufficient number of the communications solicited in Vol. xxix. No. 167,* *of the Annals of Agriculture have been obtained.*

Book I. Political Arrangements.

Section I. *Managing Authority.* 1. The management of the concerns of the poor, throughout South Britain to be vested in *one*† authority, and the expense charged upon *one* fund. 2. This authority, that of a *Joint-stock Company*,‡ under some such name as that of the National Charity Company.§

Section II. *General Scheme of Provision.* The whole body of the burdensome poor to be maintained and employed, in a system of *Industry-houses*,‖ upon a *large* scale,¶ distributed over the face of the country as *equally* as may be, with each a portion of *land* ** (*waste* in preference) at least sufficient for the maintenance of its own population. Utmost number of paupers that *would remain* to be provided for in the *proposed* order of things, say five hundred thousand:††—number to a house two thousand:—number of houses two hundred and fifty.‡‡

Section III. *Ways and Means.* 1. The whole annual produce of the poor rates, taken at a period to be settled, (say the average of the last three years,) or such part of that produce as shall be agreed upon, but subject to such contingent reductions as herein-after mentioned, resulting from a division of the profits. (See Section 9.) 2. The growing produce of the labour of all non-adult paupers, now existing, or hereafter applying for relief, or on whose behalf relief is applied for, beneath a certain age, such non-adults to continue bound to the company in quality of *apprentices*—males, till twenty-one or twenty-three; females, till twenty-one or nineteen: without prejudice to marriage. (See Book ii. Ch. ii. *Separation and Aggregation*—Ch. iii. *Buildings and Land*—Book iv. Pauper Comforts.) For the value of this fund, and for the means of enlarging or narrowing the influx of this class of hands according to the ability of the company, see Book ii. Ch. i. *Classes mustered:* and Book v. Ch. ii. *Pecuniary Estimates.* 3. Ditto of all others—none, however, to be received, but on condition of continuing to work till the value of their labour has balanced the expense of relief—upon an account taken according to certain rules. (See Book ii. Ch. iv. *Princi-*

---

* See the contributions to the Annals of Agriculture printed immediately above.—*Ed.*

† Why in *one* undivided authority, embracing the whole country, rather than in a *mixed multitude of independent* authorities, in districts composed of parishes, parts of parishes, and sets of united parishes, as at present, see Book vi. Ch. i. and iii.

‡ Why in a *joint-stock subscription company*, such as the *Bank of England*, *East India Company*, &c., rather than in a branch of *Administration*, such as the *Treasury Board*, the *Admiralty Board*, &c.—Reasons. 1. *Burden* of raising the *capital* annihilated, the contribution being transferred from the *unwilling* to the willing. 2. Security to the rateable inhabitants against *augmentation of the rates* greater, by the amount of the capital subscribed. 3. Probability of *thrifty* management in every respect greater. [See Adam Smith.] 4. Jealousy of *influence*, &c., avoided. 5. Benefit of a distinct *check* from the superintending power of government, &c. &c. [See Book vi. Ch. ii.]

§ For the course to be taken, in the event of an inadequate subscription, see Book vi. Ch. vi.

‖ Community-maintenance, why preferable to private? See a subsequent work, entitled "Pauper Systems compared."

¶ Community-maintenance, on *this large* scale, why preferable to a *small* scale? See ibid.—and see Book ii. Ch. iii. *Buildings and Land:* Ch. iv. *Principles of Management;* Book v. Ch. v. *Prospect of Success;* and Book vi. Ch. i. *Management, why in one Authority, not several.*

** The disadvantages incident to community-maintenance removed, and unexampled advantages produced, by a new plan of construction. See Book ii. Ch. iii. *Buildings and Land.*

†† Grounds for estimating the numbers that *would* be to be provided for at less than five hundred thousand. See Book v. Ch. i. *Population expected.*

‡‡ Reasons why the houses should not be fewer, nor in the first instance more, than two hundred and fifty, and why, *the number being given*, the distance between house and house should be as small as may be. See Book ii. Ch. iii. *Buildings and Lands.*

Digitized by Google

ples of Management; and Ch. x. *Book-keeping.*) Such as are unable to balance the account to work in as far as they are able;—but without prejudice to the *suitable* relief of temporary indigence. (See Book iii. Ch. iv. *Temporary Indigence relieved:* and Book iv. PAUPER COMFORTS.) 4. Contingent resources vested at present, in the hands employed in the management of the poor: such as compositions for bastards, forfeitures, &c. 5. Voluntary donations, in as far as concerns the expense of *Extra Comforts.* (See Book iv. PAUPER COMFORTS.) 6. A capital to be raised by *subscription,* on the credit of the above annual and permanent funds. Say from four to six millions. (See Book v. FINANCIAL GROUNDS. Ch. ii. *Pecuniary Estimates.*) 7. Produce of *lands* purchased or rented with a part of the above capital. See *infra* Section 6.

Section IV. *Constitution.* 1. Board of *General Direction* stationed in the metropolis—directors, say twelve or twenty-four; a governor and sub-governor included. 2. Qualification for a *Director* as in the East India Company—3. Qualification for *voting* at election of directors as in ditto.—4. Qualification for voting in assemblies of stock holders, as in ditto. 5. Shares very small,* and determinate;† say £10 or £5.

Section V. *Coercive Powers.* Powers for *apprehending* all persons, able-bodied or otherwise, having neither visible or assignable property, nor honest and sufficient means of livelihood, and detaining and employing them till some responsible person will engage for a certain time to find them in employment, and, upon their quitting it, either to resurrender them, or give timely notice; and so *toties quoties.* (See Book ii. Ch. i. *Employment secured.* Ch. ii. *Mendicity extirpated.* Ch. iii. *Habitual depredation extirpated.*) 3. Powers for apprehending non-adults of divers descriptions, being without prospect of honest education, and causing them to be bound to the company in quality of apprentices. (See as above Ch. iii.) 4. Powers for apprehending insolvent *fathers* of chargeable *bastards* and detaining them until they have worked out their composition money, as per Section 3, *supra,*—also mothers of ditto for a certain time. (See Book ii. Ch. ix. *Child Nursing.*)

Section VI. *Land-purchasing Powers.* Powers for purchasing or renting lands for the erection of the industry-houses, and the maintenance of the population of the several houses, in spots distributed as equally as may be over the surface of South Britain. 1. Lands in separate ownership in each industry-house-district (250, or thereabouts) in quantities sufficient for raising food for the population of the house (say 2000: chiefly aged persons and children.) 2. *Purchase* or *lease* at the option of the *proprietor;* if purchase, the bare value to be ascertained by a jury, and (10) per cent. to be added to that value, in compensation for the compulsion. 3. If lease, term (say twenty-one years) renewable perpetually at the option of either party, at a fresh rent, assessed by a jury; but not to be less than the preceding rent.—4. Indemnification for existing tenants.—5. Compulsion not to extend to land in occupation of the proprietor; 6. nor to land in the occupation of a tenant who has occupied it (say twenty-one years.) 7. Disabilities removed for the purpose of purchasing with consent at any time. 8. In lieu of land in separate ownership, waste land to equal saleable value, consequently in greater quantity—first lease, say thirty-one years, or longer. 9. Timber, in both cases the property of the company:—the only party interested and able to rear and preserve it. (See Book iii. Ch. x. *National Force Strengthened.*)

Section VII. *Obligations.* 1. Obligation of receiving and maintaining every *able-bodied* pauper above the apprenticing age, &c., applying for relief, on condition of his working out the expense of such relief, as per Section 3, *supra*: continuing to him such maintenance, as long as he chooses to accept of it upon these terms. (Highest necessary expense, not so much as 4d. a day: average value of the lowest paid species of labour per day, not so little as 1s.) (See Book v. Ch. ii. *Pecuniary Estimates;* Ch. v. *Prospect of Success;* and Book iii. Ch. v. *Frugality assisted.*) 2. Obligation of receiving every *sick* pauper, as above, applying for relief, and maintaining him till cured; on condition of his working out the expense of relief and cure, as above. 3. Obligation of receiving on the footing of an apprentice, (as per Section 3,) every non-adult pauper beneath a certain age, if presented by the father or other natural guardian for that purpose. 4, 5, 6, and 7. Obligation of exercising the several coercive powers, as per Section 5,

---

* *Shares why small?*—Reasons. 1. *Satisfaction* of concurring in a work of beneficence, the more extensively *diffused.* 2. The necessary quantum of *capital,* the more easy to *obtain.* 3. Pecuniary *benefit* the more extensively *diffused,* by bringing to light *small* hoards, hitherto barren, and enabling them to bear an interest. 4. *Frugality* promoted, by giving additional security as well as value to small savings. (See Book iii. Section 5, *Frugality assisted.*) 5. *Content* promoted, by giving, to the frugal among the self-maintaining poor, an interest in the economical maintenance and due employment of the burthensome poor. 6. *National quiet* promoted, by giving to some of the classes most disposed to turbulence, an interest in the prosperity of the proposed company, and of the government under which it acts—as the national debt gave to the public creditors an interest in supporting the title of King William.

† *Shares why determinate?*—Reasons. To avoid the perplexity that would attend the paying dividends of interest upon *fractional* sums. 2. To hold out to *frugality* a determinate mark to aim at. 3. To facilitate the allowance of *interest,* as between seller and buyer, according to the number of days elapsed since the payment of the last dividend, as in the case of *India bonds.*

Digitized by Google

supra. 8. Obligation of *indemnifying* the rateable inhabitants against all further *increase of the poor rates*, during the existence of the company. 9. Obligation of sharing with the rateable inhabitants the half-yearly profits of the company, in a proportion to be fixed upon, by an abatement in the quantum of the poor rates for the succeeding half-year. See Section 9, *infra*. 10. Obligation of publishing, at weekly or other frequently recurring periods, complete statements and accounts, exhibiting the whole of the company's transactions, including a complete state of the pauper-population throughout South Britain, for the satisfaction of all parties concerned. (See Book ii. Ch. x. *Book-keeping*.) 11. Power with, or in some instances, without obligation, in regard to the applying the system of industry-houses, on the company's account in respect of profit and loss, to the several collateral purposes following; mostly for the benefit of the poor, and among them chiefly of the self-maintaining classes:* viz. 1. Employment register-offices and gazette—See Book iii. Ch. i. *Employment secured*. 2. Charitable loan offices—See Book iii. Ch. iv. *Temporary Indigence relieved*. 3. Frugality banks—See Book iii. Ch. v. *Frugality assisted*. 4. Superannuation-annuity banks—See ibid. 5. Widow-annuity banks—See ibid. 6. Post-obit-benefit banks—See ibid. 7. Charitable remittance office—See Book iii. Ch. vi. *Pecuniary Intercourse facilitated, &c.* 8. Frugality inns—See Book iii. Ch. vii. *Conveyance facilitated, &c.* 9. Frugality conveyance-houses—See ibid. 10. Delinquents' pass-houses, See ibid. 11. Poor debtors' pass-houses—See ibid. 12. Charitable dispensaries—See ibid. 13. Lying-in hospitals—See Book iii. Ch. xi. *Rate of Infant mortality reduced*. 14. Midwifery lecture-schools (for females)—See Book iii. Ch. xii. *Useful Knowledge augmented and disseminated*. 15. Veterinary or cattle-disease lecture schools—See ibid. 16. Militia exercise schools (for the male apprentices—See Book iii. Ch. x. *National force strengthened*. 17. Marine schools (for the apprentices in the maritime industry houses)—See ibid.——12. Obligation of providing indemnity for such interests, if any, of third persons, as may be affected by the change.—The weight of all this business, very inconsiderable, in respect to its pressure upon the intellectual faculties of the Board of Directors, in comparison with that which is sustained by the East India Direction. (See Book v. Ch. v. *Prospect of Success*.)

Section VIII. *Restraints*. 1. Precautions against the sudden acquisition of *votes*, to serve *electioneering*, *stock-jobbing*, or other sinister or temporary purposes, to the prejudice of the permanent duties or interests of the company—restraints grounded on the regulations made in this same view in the instance of the East India Company. (See *infra*, section 11. *Director's Oath*.) 2. Precautions against applying the capital to purposes of *speculation*: buying articles for the purpose of selling them at high profit, in the same shape, instead of consuming them, or working them up. (See ibid.) 3. Precautions against applying the capital to purposes of *monopoly*:—pouring into any particular channel of production so large a proportion of capital and stock of hands as to overstock the market, and by a *temporary* underselling ruin individual competitors. (See Book ii. Ch. iv. *Principles of Management—Principle of Self-supply*.) 1. Power *expressly* reserved to Parliament for limiting the quantum of stock infusible by the company into any such channel, either in the *whole* kingdom, or in this or that *part*. 2. Power to the King and Council to make *temporary* regulations in that view, with the consent of the Directors, and subject to the pleasure of Parliament—3. Or without consent, time being given them to be heard by counsel. 4. Precautions against *bubbles*: (viz. contrivances for giving the stock an apparent value, over and above the real, in the view of enabling those who are in the secret to sell out at a high price, to the defrauding of the purchaser.) 1. Dividend to be declared (say three months) before payable: 2. Power meantime to the King in Council to reduce it, stopping payment of the excess. 3. The company to be heard by counsel, without prejudice to the exercise of the power of stoppage in the meantime. 5. Declaration of dividend void, unless accompanied or preceded by a *publication of accounts*, according to a pre-established form: *i. e.* digested under pre-adjusted heads. These forms might be inserted in the act of parliament, or the charter of incorporation. (See Book ii. Ch. x. *Book-keeping*.) 6. Power to a committee of council to *examine* directors and all other persons, *upon oath*, touching the truth of the matters set forth in the accounts. 7. Directors, or their paymasters, paying dividends after notice to the contrary from the council-board, responsible as for embezzlement. 8. *Mandamus*, at the instance of the Attorney-General, or any individual, for *compelling*, on the part of the directors, the *performance* of any of the obligations with which they are charged: costs, by the party moving—by the directors out of the company's fund—or out of their own pockets—at discretion of the court.

Section IX. *Order of the Dividends*, or Disposal of the growing Receipts. 1. *Rent-dividend*—payment of the rents of lands taken on lease, as per Section 6. 2. *Bond-dividend*—payment of the interest of monies, if any, borrowed on bond. 3. *Maintenance* of the pauper-community 4. *Interest-dividend*—payment of common interest (five per cent.) to the stock-holders, upon the capital subscribed. 5. *Profit-dividend*—distribution of the profit, if any, made by the

* All these services might be rendered in each spot, in one and the same industry-house, and, (with very inconsiderable additions) by the same hands that compose the official establishment of the house.

Digitized by Google

undertaking:—Branches of this dividend. 1. *Company's* profit-dividend (say forty per cent.) *Parishes'* profit-dividend (the remaining sixty per cent.)—Branches of the parishes' profit-dividend. 1. *Proportional easement* (thirty out of the sixty per cent.) accruing to the several parishes in proportion to their respective charges: 2. *Overburden*-easement, (the remaining thirty) applied exclusively to the benefit of the *overburdened* parishes, beginning with the heaviest burden* of all, and striking off the difference between that and the next heaviest, and so downwards; striking off, for example, the 6d. per pound from those who pay 18s. 6d. before anything is struck off from those who pay but 18s.—Standard rate, the *assessed* rate, not the *rack*-rent—to avoid disputes and murmurings. None can have much reason to complain, where all are gainers.

Section X. *Provision for existing Interests.*—1. Arrangement with the parishes and incorporated districts, who have already loaded themselves with the expense of buildings and stock. 2. Arrangement with the county and other *hospitals.* 3. Indemnification for persons enjoying lucrative situations in the management of the existing local establishments. Their experience a security for their being taken into the new establishment upon terms of increased advantage, the undeserving only excepted. The number of existing poor-houses upon a large scale much inferior to the number of the proposed industry-houses.

List of them, in form of a table, to be given in the work at large.

Section XI. *Director's Oath.*—Not vague and general, but pointed and particular:—serving as a check upon personal interest and affection, in regard to such points of duty, the infraction of which is least susceptible of being ascertained for the purposes of penal or coercive law—a guide to discretion, and a buckler against external solicitation. *Examples:* 1. Abjuration of personal interest, favour, and ill-will in the *choice of lands* for the subject-matter of the powers of purchase, compulsive, or uncompulsive. (See above, Section 6.) 5. Abjuration of *Electioneering, Speculation, Monopoly,* and *Bubbles.* (See above, Section 8.) 6. Promise to consult the *local attachments* of the pauper, as far as shall be compatible with the discipline of the establishment, in respect of the *place* at which he shall be maintained. (See Book iv. *Pauper Comforts.*) 7. Promise to execute, with unremitting vigilance, the coercive powers given for the suppression of *mendicity* and *habitual depredation.* (See above, Section 5, *Coercive Powers.*) 8. Promise to adhere, with unremitting strictness, to such of the *principles of economy* as constitute the main pillars of the system: unless in as far as any departure from them shall have received the sanction of Parliament. (See Book ii. Ch. iv. *Principles of Management.*)

* Instances have been produced, of rates as high as 19s. in the pound; but this (we may suppose) was not upon the rack-rents.

Book II. Plan of Management.

Chap. II.* *Separation and Aggregation.*—The task of *separation* incomplete, unless that of aggregation be combined with it. Purposes for which *Separation* may be necessary or useful—1. Preservation of *health* from infection. 2. Preservation of *morals* from corruption. 3. Preservation of decency. 4. Prevention of unsatisfiable *desires.* 5. Security (reciprocal) against annoyance, by bad smells, bad sights, noise, quarrels, scolding, &c. 6. Concealment (occasional) of the governed from the *censorial eye* of the governing class. 7. Security (particularly to the governing class) as against personal injury from the evil-disposed among the governed. 8. Distinctness in point of *education,* for *moral* purposes, and for the purpose of *experiment,* as between the *indigenous, quasi-indigenous, extraneous,* and *coming-and-going* stock of the *non-adult* class.—Purposes for which appropriate aggregation may be necessary or useful. 1. Matrimonial society. 2. Family society. 3. Nursing attendance. 4. Medical attendance. 5. Moral superintendence. 6. Instruction and direction of labour. 7. Intercommunity of work and labour. Modes and degrees of *separation*—as against *contact, smell, hearing, sight.* Means of *separation.* 1. In some cases separate *huts* or *cottages.* (See Ch. iii. *Buildings and Land,* and Book iv. Pauper Comforts.) 2. In general, in the common building, *form* of the building—divisions, separate and uncommunicating. (See the plate, and see Ch. iii. *Buildings and Land.*) 3. In out-door employments, mode of laying out the land. (See *ibid.*) 4. In spots that require to be occupied each by divers classes that require to be kept separated, separate *hours:* ex. gr. 1. *Baths:* one serving thus for both sexes. (See Ch. xii. *Pauper Education:* and Book iv. Pauper Comforts.) 2. Staircases, &c. 5. To *indicate* transgression,—conspicuous distinctions in dress. 6. Against *infection,* separation not merely as between *class* and class, but as between individual and individual.—*Infirmary*

* Chap. I. *Classes mustered,* is here omitted; room not being to be spared for it in an abstract thus compressed. The chief object of it is, to bring to view the several heads of inquiry, which a reader would expect to find touched upon, in relation to the several classes of hands that might naturally be looked for in the population of an Industry-house; with references to conduct him to the provision made in relation to each head, and enable him to satisfy himself whether anything be wanting, either in the list of cases, or in the provision made for them. Of the several Classes in question, a tabular view has already been given in "Annals of Agriculture," Vol. xxix. No. 167, (see Pauper Population Table,) which is supposed to lie before him. The heads may mostly be collected from the Table of Contents already given.

Digitized by Google

huts, to serve when not so employed, as *Peculium* huts. (See Ch. iii. and Book iv. PAUPER COMFORTS.) 7. Against *corruption*, the corrupted and suspected separated from the unsuspected, and in some instances, from each other, as between class and class: *casual depredators*, especially those under twenty-one, to be kept separate from the *unavowed-employment* hands, who are *habitual depredators: unchaste* hands, from those of a *susceptible* age, of their own sex, as well as of the other: as between individual and individual, to serve as an obstacle to corruptive communication, appropriate aggregation, by intermixture of *Guardian Elders*, taken from classes rendered *corruption-proof* by *good character, infirmity, or age*. The Elders secure against annoyance —by the authority vested in them—by mutual support—(there being more than one in each *ward*) and by their being stationed, by the peculiar form of the building, generally within *view*, always within *call*, of the governing body in the centre of the building. (See the plate, and Ch. iii.)

8. For *decency*, separation as between sex and sex, at the usual times of repose, change of dress, &c.

9. For *prevention* of unsatisfiable *desires*— 1. Separation at meal times, as between those who have the homeliest fare, and those, who in consideration of habit or infirmity, are indulged with choicer fare. (See Ch. vi. *Diet.*) 2. Separation as between sex and sex, from the commencement of a certain age. 3. Separation of the *indigenous* and *quasi-indigenous* stock of the non-adult class, from the *coming-and-going* stock, who might excite hankerings after emancipation, by flattering pictures of the world at large.

10. For security against *annoyance*, 1. Separation as between the annoying and the susceptible classes. 2. Intermixture of guardian elders. 3. Near vicinity and general presence of the members of the governing body, with reference to the several classes of the governed —the result of the peculiar form of the building, as above. 4. *Infirmary Huts, moveable Watch-Houses*, and other *Peculium* huts and cottages, allotted to the classes rendered by *age* or past *prosperity* peculiarly susceptible of annoyance. 5. The *insane* consigned to a set of appropriate establishments. (See Ch. xi.)

Concealment (occasional) i. e. *security* from *observation—circumferential* screens occasionally interposed between the governing body in the centre of the building, and the governed classes all round. (See Ch. iii.)

11. Security as against the violent and refractory among the governed classes.—1. Between the *central lodge*, (the proposed station of the governing body,) and the surrounding divisions occupied by the governed, an *annular area* interposed.—2. Intermixture of guardian elders with the dangerous classes, as before.

12. For distinctness in point of *education*, separation (as above) as between the non-adult and the adult, and, among the non-adult, as between the *apprentice* and the *coming-and-going* stock; and, among the apprentice-stock, as between the indigenous and the extraneous —coming in after a certain age.

13. For appropriate *care*, the insane in an establishment by themselves—or with distinct establishments for distinct classes. For appropriate care and education, the *deaf and dumb*, in a set of appropriate establishments; likewise the *non-adult* of those *born blind;* or, if in a common industry-house, collected into groups, large enough to afford, each of them, full employment to an appropriate tutor.

14. For the Union of *matrimonial society* with *decency, separation*, combined with appropriate *aggregation*. In the *bed stages* of the married ward, double cells each for a married couple, formed by high partitions, and alternating with cells of the same dimension, each holding four small children (feet to feet) of the innocent and unobserving age, say from two to four, five, or six, (see the plate annexed.)

15. For *exemption from annoyance* combined with *family society*, power of choosing an inmate, given to the occupant of each *peculium* abode.—(See Book iv. PAUPER COMFORTS.)

VICINITY—General principle with regard to arrangement, as between class and class, in point of *vicinity*. Next to every class, from which any inconvenience is to be apprehended, station a class unsusceptible of that inconvenience. Examples: 1. Next to raving *lunatics*, or persons of *profligate conversation*, place the *deaf and dumb*, if (included in the same establishment, and) separated as to sight. 2. Next to *prostitutes*, and other *loose women*, place the aged women. 3. Within view of the abodes of the *blind*, place melancholy and *silent* lunatics, or the shockingly *deformed*. 4. Next to each married couple (as before) place at bed-time a set of children under the age of observation. *Barrier-Ward*—a ward interposed for making the separation the more perfect between a ward occupied by a class considered as *noisome* or *dangerous*, and another considered as *susceptible:* classes that, for one or other of the above purposes, require separation as between class and class.

Annoyance, the great source of discomfort in the existing poor-houses—overbalancing the comfort from fare much superior to that of the independent state. This discomfort may to a certainty be banished altogether from the proposed industry-houses. (See Ch. iii. *Buildings and Land;* and Book iv. PAUPER COMFORTS.)

A separate establishment not necessary, as against moral corruption, since, in an industry-house of the proposed form, separation may, as to this or any other purpose, be as perfect in the same establishment, as between two establishments ever so widely distant.

Chap. III. *Buildings and Land.* Sect. I. Size, number, and distribution of the Industry-houses.—Number of paupers of all ages, at the opening of the institution, say five hundred

Digitized by Google

thousand: at the end of twenty-one years, by the accumulation of the apprentice stock, five hundred thousand more, at which period the accumulation ceases: the *effluents* or *outgoers*, equalling the *influents* or *incomers*. (See Book v. Ch. i. *Population expected.*)—Number to a house two thousand—number of houses at the opening, say two hundred and fifty: at the twenty-one year's end, five hundred. Number of spots therefore to be marked out for industry-houses, five hundred: whereof at the outset two hundred and fifty full, two hundred and fifty vacant.—Average distance accordingly between house and house 10⅜ miles: viz. the side of the square, of which four contiguous houses occupy the angles. Distance of the remotest part of each industry-house district from the house, upon the supposition of an exact equality of distribution, 7½ miles: being the semi-diameter of a circle circumscribing that square.—Distances upon the supposition of two hundred and fifty houses, miles fifteen and 10⅜. *Reasons* of the above arrangement —The larger the houses the fewer; and the fewer, the farther asunder. But the fewer the better, especially on the score of expense, for the company; partly on account of there being the fewer, partly, (as will be seen,) on account of there being the larger: the more, however, the better for the paupers, and others resorting to the houses: partly because the distance is less between house and house, partly because it is the less between each house, and that part of the country which is at the greatest distance from any house. The *number* of the houses being given, the more *equal* the distribution of the spots the better, because the *maximum* of the distance between house and house is the less, as also between any part of the country and the nearest house.

Advantages from having the houses upon a *large* scale, and thence from having them *few*. 1. Saving in the article of *salaries*, in the instance of such *officers* of which there must be one to each house, be the house ever so small; yet not more than one, be the house ever so large—such as governor, matron, medical curator, chaplain, &c.* 2. Ditto, in regard to *subordinates*, where the whole of a man's time must be paid for, though there is business for no more than a part: the smaller the establishments, the oftener this loss may come to be repeated. 3. Saving in the article of building, in the instance of such apartments, of which there must be one for each of the *officers*.—Bedchamber at any rate, if no other. 4. Ditto in regard to such, of which there must be one, at any rate, for each *house*, viz. Inspector's Lodge or Officers' Common Room in the centre, Kitchen, Surgeon's Room, Chapel, &c. 5. Ditto in respect to a *walled yard* attached to the *strong* ward.† 6. Ditto in respect to *utensils* necessary to every house, but which need not be multiplied in proportion to the population of the houses: such as clocks, house-door lamps, ladders, &c. 7. Saving in the article of *vessels*, the proportion of matter to capacity diminishing as the vessels are enlarged; as in kitchen boilers. 8. Advantage in respect of the faculty of carrying the *division of labour* to the higher pitch, the greater the stock of hands. 9, 10. Advantages by making *purchases*, and saving *refuse* of all kinds on a large scale. 11. Advantage in respect of the security for good management, by attracting the greater share of *public notice* and attention: *e.gr.* on the part of *travellers, topographers*, &c. —See, as to all these points, the next Chapter —Book vi. Ch. i.—and *Pauper Systems compared.*

Advantages from having the houses as *near* to one another as may be:—I. To the *pauper* community. 1. The distance the less for the *sick* to walk, or be carried to the house. 2. So, for *all* classes, in visiting their friends in their *native* parishes, or other places of *prior* residence, within the district. 3. So, for *out-of-employ* hands to go to the house for employment. II.—To the *self-maintaining* poor—The less time and labour consumed in making use of the nearest house, in its several qualities of, 1. Employment-Register-Office. 2. Charitable Loan Office. 3. Frugality Bank. 4. Superannuation Annuity Bank. 5. Widow Annuity Bank. 6. Charitable Remittance Office. 7. Frugality Inn. 8. Frugal Conveyance Stage. 9. And in visiting friends and relatives in the *house*. 10. Stages likewise the shorter, as between house and house, in the character of frugality inns and frugal conveyance houses on long journies. III.—To the *Company*, in respect of journies for transferring the *transferable* part of the stock of hands to situations where *provision* is *cheap*, or the demand for *labour* in general, or for a particular species of labour, *high*. IV.—In the character of *Poor Debtors'* Pass Houses, and *Delinquents'* Pass Houses, to the public at large.

The thing to be desired is, that between *house* and *house* the distance shall not be greater than a man, or even a woman, of the labouring class can conveniently travel on foot without *baiting:* nor, from *any* place to the *nearest* industry house, so great but that he or she may travel to and fro in the course of the day without *sleeping*.

Section II. *Plan of an Industry House, with its Appurtenances.*—Points to be attended to on this occasion. I. Health; depending on, 1. Freedom from *damp*. 2. Facility of *ventilation*. 3. Security against the spread of *infection*—thence occasional faculty of separation. II. Comfort; depending on, 4. Exemption from excessive *cold*. 5.—*Heat*. 6.—Bad *smells*. 7.—*Noise*. 8.—*Observation* of superiors, when not necessary. III. Industry; depending (as far as the building is concerned) on, 9.—*Size*. 10.—*Form*. 11.—*Dimensions*;

* For an exemplification by calculations, see the note at the end of this chapter.

† See the note at the end of this chapter.

Digitized by Google

Digitized by Google

Digitized by Google

—and 12. *Lightsomeness* of the whole building, and of each apartment, according to the nature of the business carried on in it. 13. *Compactness*, i. e. distance between apartment and apartment throughout—the shorter the better—as well for the purpose of work, as for the purpose of *book-keeping*, (in which is included the keeping account of work;) and that the whole establishment may be surveyed by the principal manager, and orders given, and answers received by him, from *every* part of it *without change of place*, IV. MORALITY; in as far as depends upon, V. DISCIPLINE: for the perfection of which there should be, 14. Universal *transparency*. 15. Simultaneous *inspectability* at all proper times. 16. On the part of the inspectors, the faculty of being visible or *invisible* at pleasure. 17. On the part of the building, faculty of affording *separation*, as between class and class, to the extent of the demand, as detailed in the last chapter. 18. Means of *safe custody*, in relation to the *dangerous* and other *disreputable* classes. 19. Subserviency to the purpose of preventing intrusion of *prohibited company*. 20. Giving *warning* of the approach of apprehended intruders. 21. Preventing the introduction of *prohibited articles*—such as spirituous liquors, gunpowder, arms, &c. VI. *Reception and Accommodation of* VISITERS. VII. *Safety against* FIRE. VIII. *Subserviency to the Exercise of* DEVOTION. IX. ECONOMY. *Expense* as small as possible in comparison to *use:* degree of use being measured by degree of subserviency to the several purposes above-mentioned.

All the above points provided for, and the principal of them to a degree of absolute perfection, by a plan of architecture, governed by a new and simple principle—the *central inspection* principle. General form, *circular;* or, for cheapness, circularly *poligonal*—say in twelve sides or cants, each constituting a *division* of the building: each division divided in height into five stories, viz. two *long* or *whole* floors, alternating with two *short* or *narrow* floors, and a *gallery* above, divided into six *stages*, rising one above another.—*Ward*, the name of an *occasional* division, adjusted in its dimensions to the population of the *class* to which it is allotted. The *governed*, (the paupers of all ages and classes) occupying the several divisions at the circumference; the *governors*, (the officers,) the central part, termed the *Lodge*, or *Inspection Lodge*. (See the plate annexed.) Any part capable of being withdrawn from inspection at any time, for comfort, decency, &c., by circumferential screens, parallel to the *outer* front of the division, and up to the height to which it reaches, closing the *inner* front.

At the time of divine service, a *stage*, on which are placed the *pulpit*, *reading-desk*, *clerk's desk*, and *communion table*, lets down through the ceiling upon the floor of the lodge. Balanced by counterpoises all round, a moderate force is sufficient to raise or lower it. The under surface of the stage, in form of a flattish dome, constitutes, as far as it extends, the ceiling of the lodge. The descent of this dome discloses a set of circular seats above, serving as a *gallery* for chapel visiters. The pauper congregation are ranged, at the inner front of their several divisions, on a set of forms, backed by the circumferential screens, which keep the implements of work out of sight. An interval of two feet all round, above the top of the circumferential screens, serves for the admission of the light.

Means of Ventilation. 1. Between the *lodge* and the *divisions* all round, an *annular well* covered by an opening sky-light, and clear from top to bottom, except in as far as occupied by the staircase, and the two stories of landing-place or gallery all round, for communication between the staircase and the several divisions. This well will maintain a draught of air from the several stories of windows all round (five in number) whenever they are open, as a chimney does from a door. 2. Chains of *ventilation tubes*, running from the bottom to the top of each division.—Conceive a square tube, (like that used for conducting rain water from the top to the bottom of a house,) running through the building, at bottom piercing the floor of the lowest level or ground story, at top piercing the roof. On the ground story, conceive a few inches of this tube cut away, from the ceiling downward. This discontinuance will give room for that part of the air injured by respiration, which being the lightest, tends to occupy the top of the room, (viz. the *azote*) to escape through the ceiling, at the part where the tube recommences: and (the height at which the tube opens being so much above the height of a man standing in the room) will not incommode any of the inhabitants by the blast. An equal part, and no more, is cut away, in like manner, in the room immediately above; where, for the reason just given, the foul air issuing from the room below will not be breathed over again by the inhabitants of the upper room; not being discharged into it, but at a height considerably above that of their mouths. Another chain, the converse of the above, for carrying off the heavy part of the foul air, (viz. the *carbonic acid;*) the interruptions being in this case towards the floor, instead of being towards the ceiling, as in the former case.

One division, allotted for officers' private apartments, is exhibited in the draught: five *whole* floors, as in an ordinary house. Out of the interior part of it is taken the *only staircase:* out of the annular well, the *galleries* forming the *communication* between the apartments and the staircase. In the central part, the lowest floor a little lower than in the circumferential, for the sake of getting two floors of *store-room* under the lodge.

The height of the central lodge being, according to the plan, fourteen feet, and capable of being increased, a *gallery* (not exhibited in the draught) extending all round to a breadth

Digitized by Google

limited by the circumference of the dome, would on week days afford a commodious station for any number of *clerks*, and on Sundays would add to the accommodation of *chapel visiters*. Should any deficiency of light be perceived in the lodge, a supply might be obtained by lining the interior boundary of the gallery on the outside here and there with pieces of looking-glass, by which the light, coming through the windows of the upper or gallery floor of the divisions all around, might be reflected down into such parts of the lodge as it would not otherwise reach; and by the same means some parts of the *upper floor* or gallery all around might be rendered visible to some parts of the lodge, to which they would not present any direct view.—Means whereby the lodge, notwithstanding the centrality of its situation, might at all times be subjected to any degree of ventilation that would be required.—Two hollow *trunks*, leading from the outside of the building, through the *radial* passage, one on each side the door-way, forming each of them at its surface a seat, skirting the passage the whole of its length. Entering the *lodge*, one on each side of the door, they terminate each in a hollow pilaster; from this pilaster the air may be discharged either at a height approaching that of the ceiling (as in the chain of ventilation-tubes for the apartments in the circumference) or at any lesser elevation, by means of apertures opening or closing at pleasure. Continued up through the *chapel-visiters' gallery*, they would afford ventilation to that part. In general a sufficient current would be kept up by difference of *temperature*: but in a hot season, and a stagnant atmosphere, the current might be accelerated or produced by the action of any one of a variety of *machines*, too well known to need any description here.

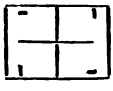
The same room for all purposes—work, meal, and sleep. Lodging is thus afforded with scarce any addition to the expense.*—Accommodation for *sleeping*.—I. SINGLE BED-PLACES; *i. e.* places for single persons of all ages, from about six years old upwards. (See the plate.)—A range of *bed-stages*, or frames, in a line, running along each of the side-walls of each room, as shown in the ground plan; the head towards the wall. Each bed-stage six feet in width, and from six feet and a half to five feet and a half in length: the longest where the room is broadest; some holding three persons, others four, with a partition between every two persons: height at the head, the width of two boards; (a little less than two feet) sloping down to the breadth of one board at the feet; (a little less than one foot.) Room in width for each person—in a stage holding three, twenty-four inches;—in a stage holding four, eighteen inches: (seamen have but fourteen.) Each bed-stage, being furnished (as in the plate) with a *counterpoise* at two or each of the four corners, might draw up to the ceiling in the day-time, to leave the space below clear. But if *reversed*, it would form a *table* for working at, or any other purpose; the extra-depth, which would be in the way of the knees, being got rid of, by doubling up on hinges: by means of a few cords remaining constantly attached, the beds and bedding would pack up within the frame: the *stand*, composed of two *horses* crossing one another, and turning round a common upright (the horizontal section of it being represented by an X) would be nearly flat when the legs of X were brought close, for the purpose of stowing the stand away at bed-time, when not thus employed. The *partitions* furnished with proper stands, might form each of them a *bench* to sit upon at table; or two together might form a narrow table. Various means of adapting the articles in question to these changes may be conceived; the particularizing them would require more room than can be spared. II. DOUBLE OR MARRIED BED-STAGES. (See the plate.) Each four feet in width, bounded by a moveable partition or screen on each side, six feet and a half high.—Alternating with these *married* bed stages, sets of *children's* bed stages, for children of an innocent and unobserving age:—say from two to six years: each for two rows of children, lying feet to feet: breadth, in some, for two children in a row, in others, for three. In the two opposite ranges, in the same room, the alternation should be so managed, as that each couple should have for its opposite neighbours—not another married couple—but a set of children. In the day-time, these high partitions serve for the circumferential screens, employed as above at chapel-times, and at other times (still in the same circumferential situation) as *anti-inspection* screens, in vacation hours.—When not in use, they stow away in the *radial* direction, close and parallel to the *radial* walls.—For the sets of *cribs for infants*, see the plate, and see Ch. ix. *Child-nursing*.

INFIRMARY. Persons labouring under infirmities neither noisome nor contagious, are lodged in the uppermost or gallery floor: a person labouring under an infirmity either noisome or contagious, occupies to himself an *infirmary hut*. Description of an infirmary hut. A cube of seven or eight feet. Width of the door, three feet: width of the bed, three or four feet; space on the other side of the bed, one foot. The door close-fitted and well listed:

* Systems which afford work alone, or work and diet without lodging, exclude from relief those whose homes are too far distant, and the *homeless* classes, whose need of relief is the most urgent. Want of a *home* is the result of extreme poverty in any of the classes: but there are some to which it is *essential*, others to which it is more particularly incident.—Examples.—1. Children deserted by both parents. 2. Orphans (fatherless and motherless.) 3. Foundlings. 4. Bastards. 5. Strange hands. 6. Stigmatized hands. 7. Suspected hands. 8. Unavowed employment hands. 9. Beggars. 10. Unchaste hands. 11. Disbanded hands.

Digitized by Google

particularly at the side by which it hangs on the door-case. As the door opens, it forms a screen to the head of the patient, defending him against the blast. On the inside, a thin board, as long as the door is wide, fastened to the top of it, making with the plane of the door an angle greater than a right angle, for the purpose of directing up towards the ceiling such of the air as, at the opening of the door, comes in above. To weaken the reverberation of the blast, opposite the door, an oval hole, closed by a well-fitted and listed shutter, playing loosely on a pin on which it is hung, and loaded a little at the bottom, that it may the more effectually overcome the friction, and replace itself in a position exactly vertical;—the fresh air, as it comes in at the door, pushes before it, and pushes out at the aperture, a part of the air which it finds in the room, and which, were it not for the vent thus given to it, would reverberate upon the bed. On the right hand of the patient, as he lies in his bed, a small window, not opening, but closely caulked. The bedstead on feet, one foot and a half above the ground. On each side, and at the feet, a flap, running the whole length, and reaching to the ground, turning by hinges on the bedstead. For warmth, the flaps are turned up, and occupy a vertical position, enclosing the patient as it were in a box, and keeping the bed-clothes from being undesignedly thrown off: for coolness, they let down. The ceiling, instead of being flat, *coves* a little in two slopes, corresponding to those of the roof: at top they do not meet in an angle, but in a narrow plane, say a foot wide; in the middle of its length, an aperture, say about two feet in length, closed by a *slider*, to let out the foul air occasionally at the top, more or less frequently, according to the temperature. The convergescence of the roof, which may take place in two directions only, or in all four, enables the blast to sweep out the air the more clearly; there being no corners where it can lurk unexpelled. For *equality of temperature*, the outside covering *thatch*: unless any apprehension should be entertained of its harbouring infectious vapour, in which case *tiling* or *slating* must be employed instead. The door clogged by a *counterpoise*, to ensure the shutting of it, and to moderate and equalise the blast produced by opening it. In cold weather, to close it more effectually at bottom, a *roller* hanging loosely by the woollen cloth by which it is covered. When not occupied as an infirmary, each hut would make a comfortable abode for two persons, at bed and meal times. By putting four together, four walls out of the sixteen, or by putting together two, one wall out of the eight might be saved, as in this figure, in



which the situation of the door is marked by the short line:—but, on the quadruple plan, the benefit of the vent for the blast of the door is sacrificed. In as far as noisomeness is the sole ground of sequestration (as in bad venereal cases) the *quadruple* plan may be as good as the *double* or *single;* and there seems no reason why the double plan, at least, should not be upon a par with the single, even in the most infectious fevers.*

Section III. Approach and out-lying Cottages.—The approach, an *avenue* bounded by parallel walls; each wall serving as a support or back to a *pent-house roof*, supported in front by slender posts, forming thus a sort of covered walk or *corridor*, tiled or thatched, paved with brick or stone, according to the country. The same wall forming one of the boundaries of a line of *out-lying huts* or *cottages*. The door of each cottage opening into the corridor: a small window, either at the top of the door, or in the wall opposite. Between door and door, a *bench* for the customers to the Industry-house, in its quality of *Employment-Intelligence-Office:* over the benches the series of *Employment-Gazettes* pasted against the wall. (See Book iii. Ch. i. *Employment secured.*) No cooking being to be performed in any of these huts, each consisting of but a single room, on a plan nearly similar to that of the *Infirmary Huts*, they might be warmed by a *flue* running through the line of them, as in *hot houses.*†

Uses of the Avenue. This the *only* approach—no introduction by stealth—neither ingress nor egress for any one without his being exposed to scrutiny, the whole length of the avenue. Occasional barrier across the avenue

---

* Advantages from the transfer of the place of sick-relief, from an hospital on the common plan to a company's Industry house.—1. In contagious cases, *separate* huts as above. (See Aikin on Hospitals.)—2. In cases requiring confinement, *confinement* more effectually *ensured;* a point found to be attended with great difficulty in the government hospitals.—3. *Exercise* suitable to convalescents, (whether mere exercise, or in the way of profit-yielding employment,) facilitated by the stock and personal strength of the house.—4. *Airing*, in addition to exercise, facilitated by the same means. —5. Habits of *industry* thus maintained without relaxation.—6. *Saving*, (to the company,) by exclusion of cases of *pretended* sickness, and convalescence purposely *protracted.*—*Profit* by the work.

† Estimate of the expense per *hut*, on the above plans:

	seven-feet cube.			eight-feet cube.		
	£	s.	d.	£	s.	d.
1. On the single plan	8	14	0	11	5	0
2. On the double plan	7	15	0	10	1	0
3. On the quadruple plan - - -	6	16	0	8	17	0
4. On the running plan for the outlying cottages - -	6	16	0	8	17	0

Except the first and last in the line, which would be as on the double plan.

N. B. Chimney and fire-place are not included: the most advantageous mode of warming, for cases 1, 2, and 3, not having been determined on: but will be in Book v. Ch. ii. *Pecuniary Estimates.*

Digitized by Google

at one or both ends, to keep out the promiscuous influx of the *employment-seeking hands.*

In the corridor, the bedridden and infant part of the population might receive air and exercise on a rainy Sunday, by being drawn on *droshkies* (a vehicle in use in Russia, consisting of a board mounted on wheels) by the stout part of the children of their own sex; the non-existence of windows towards the avenue, would preserve the ancient inhabitants of the cottages from being incommoded by the noise and promiscuous resort of the *Employment-seeking* hands: and if, on this or any other account, it were an object at any time to cut off such communication altogether, the access of those visiters might be confined to hours when the inhabitants of the cottages were at their employments in the house.

Section IV. *Means of Separation.* Uncommunicating floors in each division, three out of the five: each short floor communicating with the long floor immediately underneath it. Divisions, eleven out of the twelve: the twelfth being reserved for the officers: three, multiplied by eleven, gives thirty-three uncommunicating apartments. Three and thirty classes may thus be kept in a state of perfect and constant separation from each other, yet all of them constantly present to the officers in the lodge. Between whatever classes a separation is kept in the house, it must be equally kept up without the house: the *land* must, therefore, be separated into *wards*, as well as the house. Between class and class, the barriers will be constituted by *roads*, not to be crossed by either class, nor to be made use of as roads by both at the same time. Barrier against *strangers*, a double fence all round: the space between fence and fence a *belt* planted with wood. It may be termed the *sequestration belt.* The *land* divisions *radiating* in continuation of the house divisions: the house not far from the centre of the land, that the land divisions may be equal as well as the house divisions; or if one ward requires less land than another, the land division may, on that side, be so much the shorter, and the house so much the nearer to the extremity of the land.

Difficulty of framing the conception to an adequate comprehension of the central-inspection plan, and of the effects it would have upon the management.—If in a building on this plan, anything of disorder is supposed, it must be, because though in words, the adoption of it may have been admitted, the state of things that would be the necessary result of it, is not present to the mind. The disorder supposed is supposed to be out of sight, which in fact it never could be. From the want of this advantage, proceeds that anxiety, the intensity, and at the same time, the inefficacy, of which is apparent in every page of the rules and orders that one sees. "*Officers* frequently *to go into the wards*—frequently *to hear complaints*—*master* frequently *to go into every ward, and inspect the persons therein, on a particular day of the week especially*—Twice *a-week the matron to inspect every part of the house*—*Paupers to be kept clean*—*Officers* frequently *to take a view of them*—*Paupers to come down into the dining-hall to be mustered and employed*—*doors to be locked, that they may not* harbour *in the wards in the day time*—*Nurse-children* frequently *to be visited*—*once* a-month *at least*—*Apprentices* frequently *to be visited by the Messenger.*"—This, from the regulations of one of the first-rate Poor-Houses—All this an attempt—and that, probably, in a great degree, an unavailing one—to effect by great exertions, not a hundredth part of what on the central inspection plan would take place of itself, without a man's stirring from his chair.*

---

* Rough calculations, to exemplify in a few of the simplest instances, the expensiveness of a set of industry-house establishments upon a *small* scale (that of the *Suffolk* industry-house taken for an example, as being an existing one) in comparison with a *large* scale, such as that proposed.—The proposed scale (two thousand to a house) may be set down as ten times the magnitude of the Suffolk scale: for A° 1792, 1780, and no more, was the number in the nine Suffolk houses, as per observation of Mr Ruggles. Had it been 1800, two hundred to a house.—Numbers they were built for, or might hold, 3495—almost double:—an excess, and thence an extra expense, not to have been dispensed with in a set of *unconnected* establishments, instituted and conducted by *independent* authorities, and maintained out of *independent* funds, since under such a system the overflowings of one house cannot be received into the vacancies of any other.

I. *Official Establishment.*

Pay on the two scales (salaries and board included) of four of the officers, of which upon each scale there must be one, though there need not be more than one upon either: viz. governor, governess or matron, chaplain, and surgeon. Suffolk salaries, as per information from the houses: board, where allowed, estimated by supposition, at 10s. 6d. a-week for males, and 7s. 6d. a-week for females. On the proposed plan, persons of superior talents and education being required, an augmented rate of salary is allowed on that account. Average of Suffolk yearly pay—Governor and matron (not given separate) £91, 16s. 9d.; chaplain, £32, 1s. 6d.; surgeon, £109, 9s.;—Total, £233, 7s. 3d. *Proposed* pay. Governor and governess or matron, £400; chaplain, £100; surgeon, (or rather medical curator,) £200; total £700.

	£	s.	d.
Amount of the four salaries, at Suffolk pay, on the Suffolk scale, for one house -	233	7	3
Amount of four salaries at *Suffolk pay* in the *Suffolk scale*, for the whole of South Britain, £233, 7s. 3d. by 2500, - -	583,406	5	0
Amount of ditto, at *Suffolk pay*, on the *proposed scale*, for ditto, £233, 7s. 3d. by 250, -	583,40	12	6
Possible saving, - - -	525,065	12	6
Amount of ditto, at the *proposed pay*, on the *proposed scale*,	175,000	0	0
Saving *proposed* - -	408,406	5	0

Digitized by Google

Section V. *Means of extension.* *First* method —If the purpose, for which the extension is wanted, be such, as a floor of one of the divisions of the house will suffice for, apply it accordingly, giving a proportionable increase to the line of *avenue*, or *outlying cottages:* for, (per estimate,) when once provision has been made for the two thousand upon the *central inspection* plan, outlying cottages, at two lodgers to a cottage, may be built at an expense not greater per head than the expense of the main building. This plan of extension may be pursued, so long as there is an assurance of a correspondent number of inhabitants, so circumstanced, as that they can be made to do as much work in value, *out* of the main building as *in* it: being employed, for example, partly in out-door work, partly in such in-door and sedentary work, as they may be trusted with, and would be capable of doing, in such a confined and ill-lighted situation: to which may be added, such farther number for which room can be found in the main building at the in-door working times. The additional stock of comfort afforded by this method, will be no small recommendation to it.—*Second* method, by which an extension may be given to the main building to an unlimited amount, for any purposes in relation to which the benefit of the *central inspection* principle is not wanted:—Before, and parallel to, that division which fronts the avenue, add a *projecting front*, communicating with the main building by a narrow passage:—length of the passage, such as to save the division from having its light ma-

II. *Working and Airing Yards for Strong Wards.*	£	s.	d.
Suppose on the Suffolk scale, a *square rood* (having for its side a length of 104 ft. 4 in.) to be necessary for such a purpose.—Amount of the walling for one house, as per estimate,	208	13	4
Amount of ditto, for South Britain, upon the *Suffolk scale*, £208, 13s. 4d. by 2500,	521,666	13	4
Amount of ditto, for ditto, upon the *proposed scale*, if the space were not increased, £208, 13s. 4d. by 250, - - -	52,166	13	4
Saving on this supposition,	469,500	0	0
Amount of ditto, for ditto, upon ditto, if the space were increased in proportion to the population of the house—*i. e.* multiplied by 10.—Walling for a square plot containing 10 roods, £660, by 250, - -	165,000	0	0
Saving on this supposition,	356,666	13	4
Amount of ditto, for ditto, upon ditto, if the space were to be increased in the proportion supposed to be necessary,—viz. doubled.—Walling for a square plot containing 2 roods, £295, 3s. 4d. by 250, - -	73,791	13	4
Saving *proposed*, - - -	447,875	0	0
III. *Industry Houses*, exclusive of the strong-ward yards.			
Average expense per house, upon the Suffolk plan (as per information from the houses)—building alone, exclusive of fitting, furnishing, and stocking, at the low prices of those times,	4111	2	3
Expense of building for South Britain upon the *Suffolk plan and scale*, £4111, 2s. by 2500,	10,277,750	0	0
Expense per house, on the *proposed plan* and *scale*, as per annexed draughts, and the estimate thereon grounded (both by Samuel Bunce, Esq., Architect to his Majesty's naval works) the prices being the London prices, A° 1797,	9428	0	0
Expense of building for South Britain, upon the proposed plan and scale, £9428 by 250,	2,357,000	0	0
Saving on the *proposed plan and scale*, - - - -	7,920,750	0	0

In the estimate according to the proposed plan, are not included, 1. The infirmary huts. 2. The outlying cottages. 3. The sheds, that may be requisite for out-houses. 4. The descending and ascending stage of the chapel, and the benches above. But the main building holds considerably more than the 2000, exclusive of infirmary huts and cottages; and the amount of all these articles together would not equal the difference between the London prices of this time, and the Suffolk prices of those times, (See Book v. Ch. ii. *Pecuniary Estimates.*) Farming buildings do not belong to the account, there being nothing that can be called *farming* in the Suffolk establishments.

Savings recapitulated.—

	£	s.	d.
1. Amount of annual salaries, &c., of four of the officers, the value put into the shape of principal money, at five per cent. to match with the two other articles,—£408,406, 5s. by 20, - - - - -	8,168,125	0	0
2. Working and airing yards, for strong wards, - -	447,875	0	0
3. Main buildings, - -	7,920,750	0	0
Total of saving on these three articles alone, - -	16,536,750	0	0

This is but a part of the difference in point of economy between the two systems; it is to be observed, however, that of what concerns the *building*, a very great part is the result of the peculiarity of the *plan*, not of the amplitude of the *scale*.

The average number of parishes to a Suffolk house being twenty-eight, *quere*, what would be the *total* saving upon the *proposed* system, in comparison with a system of *working-schools* for single parishes, 14,500 in number, with liberty, indeed, of uniting, but so as not to be so wide asunder, but that children of the lowest workable age may go home at bed-time, and at meal-times?

Digitized by Google

terially obstructed by the projecting front: for which reason, so far at least as that division extends, the projection should consist of but one floor: the roof low, and if flat, so much the better.*

Chap. IV. PRINCIPLES OF MANAGEMENT.—Necessity of finding a name for each leading principle, for the purpose of reference.—The newspaper mode of naming parliamentary *bills*, a precedent, and an example of the use. To each *principle* corresponds a *rule*, given at length in the work at large, with the requisite limitations and explanations.

Section I. MANAGING HANDS—*Means:* 1. *Separation and Aggregation* principle. (See above, Ch. ii.) 2. Central *Inspection*, or *Inspection-architecture* principle. (See above, Ch. iii.) 3. *Ample Scale* principle—Push to the utmost the advantage derivable from the amplitude of the scale—For applications, see *infra*. 1. *Labour-division* principle.—2. Whole-*sale purchase* principle—*Refuse-employing* principle.—(And see *supra*, Ch. ii.) 4. *Management-selection* principle. Under each head of management, observe in what industry-house the management in relation to that head, is better than in the rest, and introduce it into the rest. 5. *Tabular-statement* principle. In each industry-house, reduce the system of book-keeping to the form of a table, inspectable at one view, and at each period, from the two hundred and fifty particular tables, form a general table. (See *infra*, Ch. x. *Book-keeping*.) The use of the *Tabular-statement* principle, is to facilitate the application of the *Management-selection* principle.—No close and persevering comparison, but when the objects are on the same surface of the same paper, or of divers papers ranged in the same plane. 6. *Uniform-management* principle. Keep up the same plan of management in all the industry-houses, in all points, which present no particular reasons for variation, as between house and house. Frame for this purpose at the outset, a set of *blank books* or *forms*, to be observed in all, improving them from time to time, according to the suggestions of experience. 7. *Local-consideration observing*, or *exception-observing* principle—a memento, not to push the principle of uniformity too far—so far as to keep the management the same in any two establishments, in regard to any point, in respect of which the influence of local circumstances requires a difference.

Section II. MANAGING HANDS—*Motives:* 8. *Duty and Interest* junction principle.—No means to be omitted that can contribute to strengthen the junction between *interest* and *duty*, in the instance of the person intrusted with the management:—*i. e.* to make it each man's *interest* to observe on every occasion that conduct which it is his *duty* to observe. Application of this principle to practice—All means of acting upon a man's interest, reduceable to the two heads of *punishment* and *reward*.—Punishment, commonly so called, is out of the question here, being provided by the general dispensations of law—applications of reward are left mostly free in transactions between individual and individual. But money (including money's worth) is, in point of effect, the matter either of reward, or punishment, or of both at once, in so far as it lies in the power of one man to cause it to pass into, or to pass out of, the hands of another. A given mass of reward is the more *valuable* (because the more *certain*) where it attaches *of course* upon the conduct intended to be promoted, without the formality of legal investigation, directed expressly to that purpose. The duty of the manager of an industry-house has two main branches: duty towards those under his care, resolvable into *humanity*—and duty to his principals, (the company,) resolvable into *economy*. *Publicity*, the most effectual means of applying the force of moral motives, in a direction tending to strengthen the union between his interest and the *humane* branch of his duty; by bringing to light, and thus exposing to the censure of the law and of public opinion, or at any rate of public opinion, every instance of contravention. For enforcing *economy*, what is called *contract*, is the most efficacious species of arrangement, where the case admits of its being adopted:—the contractor standing to the *whole* loss (the apprehension of which operates like the *fear* of *punishment*) as well as to the whole profit, (the expectation of which operates like the *hope* of *reward*.)—Next to that, *partnership*; in which a man stands to only a *part* loss and *part* gain:—the union between interest and duty being of course the stronger, the larger a man's share: (regard being had to the sum-total of his property) especially since the larger a man's partnership share, the less the difference between the whole of any profit which he might make to himself in *fraud* of the partnership, and the share that would come to him

* What is still better than *facilitating* extension, is the reduction effected in the *demand* for extension, to the degree that has just been seen, by the substitution of the law of *universal* settlement to the law of *local* settlement. This depends on the distinction (already glanced at in the paper printed in No. 167 of the Annals, see above, p. 364) between the *transferable* and *untransferable* stock of hands. For a moderate and limited time (suppose a year or two) any persons may be considered as transferable to any part of the country, except persons beyond a certain age, who have never dwelt for a certain length of time together, in any place more than [ ] miles distant from the parishes in which they were born, or settled ever since [ ] years old.—I. Hands transferable without reserve—Children not above years old, being, 1. Deserted by their parents. 2. Orphans, fatherless and motherless. 3. Foundlings. 4. Bastards. 5. Insane hands.—II. Hands transferable with less difficulty than others, though not altogether without reserve.—1. Strange hands. 2. Stigmatized hands. 3. Unavowed-employment hands. 4. Suspected hands, (including children of stigmatized and unavowed-employment hands.) 5. Beggars. 6. Unchaste hands. 7. Disbanded hands. 8. Children of disbanded hands.

Digitized by Google

fairly, *under* the partnership. Next to that, a share of profits, without any share of loss. Danger to be guarded against, where share of *profit* is confined to *particular* articles—temptation to increase, to the prejudice of the partnership, the amount of the partnership transactions in these articles—and so *per contra* in the case of *loss*. *Salary*, an expedient to be recurred to no otherwise than as far as *contract* or *partnership* are inapplicable. Salary, however large, affording no motive for the *habitual discharge* of the trust, much less for any extraordinary exertions in the view of discharging it to the best possible effect, but only for the *single* act of *undertaking* it, and thereby exposing one's self to the penalties appointed for *non-discharge* or *mis-discharge* of it.—General receipt for connecting a man's interest with his duty—Cause a *profit* to accrue to him of itself, on the taking place of the result proposed to be promoted—or a *loss*, or other prejudice, on the taking place of the result proposed to be averted. For instances of the application of this principle to the *working* and other *subordinate* hands, see the several principles of detail, exhibited further on, under the head of WORKING-HANDS—*Motives*.—For an instance of its application to the situation of the local manager in chief, (the governor,) or other persons bearing parts in the management, see the next principle.

9. *Life-Assurance*, or *Life-warranting* principle.—Give to every one, on whose care, in the instance of each child, the probability of its life in any degree depends, an interest, and that a pecuniary and never-ceasing interest—in the preservation of its life.—Application of this principle. That the service of an average child to twenty-one, possesses a clear value—reckoning even from birth—much more, from any more advanced period, is proved in another place. (See Book v. Ch. ii. *Pecuniary Estimates*.) By giving this service to the company, an interest in the wished-for result (viz. the preservation of life to the latest period)* is given to the company: an interest, from which flows the company's best and largest source of profit. It is therefore the company's interest to communicate a share of this interest to such of its several subordinates, on whose conduct the result in any way depends, in such shape and quantity, as shall in each instance be best adapted to the purpose.—Examples: 1. Establish it as a rule, that the governor, matron, medical curator, and female midwife, shall, each of them, pay head-money, for every woman who dies in child-bed. 2. Give to a certain part (the larger the better) of the emoluments of the governor, matron, medical curator, and nurses, the shape of head-money, payable for the survivors only of the *non-adults*, from year of age to year of age, either during the whole of the apprenticeship (viz. to twenty-one) or only during the age of extra-mortality. 3. Give in all like manner an *extra* premium or bounty to the governor, matron, medical curator, and nurses, of such of the industry-houses (in a certain number) in which the success of the management in this particular, shall, within a certain period, (say yearly,) have been most conspicuous.—The interest which a member of the community at large, has in the populousness of the community at large, is as nothing, in comparison with the interest thus created; viz. on the part of a member of the company, and still more on the part of an officer of a company's industry-house. This is the only shape which genuine and *efficient* humanity can take. The notion, which insists upon *disinterestedness* (i. e. the absence of the species of motive most to be depended upon) as an indispensable qualification, or even though it were but a recommendation, in the instance of a person bearing a part in the management of such a concern, is a notion respectable in its source, but the most prejudicial in its tendency of any that can be imagined—Every system of management which has disinterestedness, pretended or real, for its foundation, is rotten at the root, susceptible of a momentary prosperity at the outset, but sure to perish at the long run. That principle of action is most to be depended upon, whose influence is most powerful, most constant, most uniform, most lasting, and most general among mankind. Personal interest is that principle: a system of economy built on any other foundation, is built upon a quicksand.

10. Principle *of Publicity*, or *Transparent-management* principle. This regards *motives* as well as *means*. The more universally the particulars of the management are held up to view, the more universally the means of observing, and thence of adopting, whatever is good, and of observing, and thence of avoiding whatever is bad, are held up to view: and the stronger the force (because the greater the *certainty*) with which the motives derivable from the *popular* or *moral*, as well as those derivable from the *political* or *legal* sanction operate towards the insuring such adoption and avoidance. For the dependance of the degree of publicity on the amplitude of the scale, see *supra*, Ch. iii.

11. *Concourse-attraction* principle—a branch of the principle of publicity.—In the contrivance of the buildings, and the whole system of management, neglect no circumstance that can contribute to engage attention to the management, and attract to the spot a *concourse* of such visiters, whose remarks may afford instruction, and their scrutiny a spur to improvement, and a check to abuse. (See Ch. xii. *Pauper Education*—and Book iii. Ch. x. *National Force strengthened*.)

Section III. WORKING HANDS—*Employment:*

* For a gross sum once paid, new-born infants have been taken off the hands of parishes and individuals, by persons whose management has not been exposed to observation. This arrangement illustrates in the way of contrast that which is here recommended. A dead child neither tells tales, nor in any shape gives trouble to any body.

Digitized by Google

12. *All-employing* principle. Reasons—Health, amusement, morality, (*i. e.* preservation from vice and mischief,) as well as economy. Not one in a hundred is absolutely incapable of all employment. Not the motion of a finger—not a step—not a wink—not a whisper—but might be turned to account in the way of profit in a system of such a magnitude. (See below, *Labour-division principle.*)—A bed-ridden person if he can see and converse, may be fit for inspection; or though blind, if he can sit up in the bed, may knit, spin, &c. &c. Real inability is *relative* only—*i. e.* with reference to this or that species of employment, or this or that situation.—In the situation in question employment may be afforded to every *fragment* of ability, however minute. On the part of the deaf and dumb, and the blind, the ability is *entire;* requiring only to be directed into particular *channels.* So, on the part of most classes of the *insane,* requiring only particular *means* for the *direction* of it.—In a limited local establishment on the present footing, the stock of ability lies oftentimes unemployed, for want of those appropriate means and opportunities of employment which could not be afforded to any profit in any other than an establishment on the largest scale.

13. *Employment-appropriation* principle.—Till the several classes of *confined hands* (*i. e.* who, by reason of infirmity, are susceptible of *particular* employments only, see Ch. viii. *Employment*) are provided, allot no such employment to *unconfined-ability-hands,* possessing a natural capacity for *every* employment. Husband the stock of *anybody's work employments,* reserving them for *confined-ability hands,* according to the nature of the case, and expending none of them upon *hands of all work.* Examples: 1. Allot not to *males* any employment exercisable by *females,* till the female stock of hands is fully provided: 2. Nor to adults, or children of a superior age, any employment exercisable by children of the lowest workable age, till the stock of hands of that lowest age is provided: 3. And so with regard to the *deaf* and *dumb,* the *blind,* the *lame,* &c.: 4. Nor to the willing, any employments to which the *earn-first* principle is applicable, without imputation or danger of inordinate severity, till the stock of *lazy* hands is provided with employments of that nature. (See *infra,* Section iv. *Earn-first principle.*) 5. Nor to *practised* hands any employments to which *unpractised* hands are competent, till the stock of unpractised hands is provided in like manner.* *Any-body's work* employments are such as may be carried on by unpractised hands: *imperfect-hand* employments, though capable of being carried on by imperfect hands, may require practice.

14. *Labour-division* principle. In the choice and allotment of employments, remember to improve to the utmost the room afforded by the largeness of the scale for the division of labour. Besides the saving of time, in respect of the passing from employment to employment, and from place to place, the more operations a process is divided into, the more simple the several operations: and the more simple an operation, the better the chance it has of being brought within the competence of the different classes of *confined-ability* hands, as just described.—Thence, 1. Time saved. 2. Relative ability increased. 3. Quantity of the scarcest sorts of employment increased.—The extent of the advantage derivable from this principle has no other limit than what is set by the expense of conveyance, viz. the expense of conveying the stock of raw, or less elaborated materials, to the spot where the stock of hands is accumulated; and from thence, in a finished or more elaborated shape, to the field of consumption or demand.

15. *Employment-changing,* or *several-trade* principle.—Classes of employments proper in divers points of view, to be assigned interchangeably to the same hand: 1. For health and gain of working time, one laborious, another sedentary or unlaborious. 2. For health and equal development of strength, (See Ch. xii. *Pauper Education,*) one *stationary,* (which may yet be laborious,) one *ambulatory.* 3. For gain of working time, one *out-door,* or *fair-weather* employment; one *in-door,* or *all-weather* employment. 4. For saleable profit to the Company—to the *public,* despatch, and saving of expense—one *low* but *certain-profit* employment for a *peace* employment; *ex. gr.* improvement of land:—one *high* though *temporary profit* employment, for a *war* employment; *ex. gr.* ship-building, and the trades connected with it. In the instance of the female branch of the unripe stock of hands, by way of preparation for matrimony, or private service, the circle of *family* employments alternating with the manufacturing, agricultural, and other profit-yielding *community* employments of the house. Examples: Child-tending, sick-tending, cooking, washing, making, mending. Inattention to this point among the existing community-establishments.

16. Principle of *self*-supply.—In the whole stock requisite for the maintenance of the establishment, there will be few, if any, sorts of articles—even raw materials included, as well as workmanship—that might not be produced by the working strength of the establishment:—if it be sufficient in quantity the whole expense of the present poor rates might thus be saved. Advantages: Value in the way of *use,* not susceptible, like value in the way of *exchange* of being destroyed or reduced by glut, competition, stagnation, change of fashion, war, or other causes; nor by imperfections in workmanship affecting *appearance* rather than use:—imperfections particularly congenial to such unpractised and feeble hands.—Under the

* In the work at large, lists of *any-body's work* employments, and *imperfect-hand* employments, will be endeavoured to be made out.

Digitized by Google

principle of self-supply, neither *market*, i. e. *demand*, nor capacity of production, are exposed to failure.—Each hand working, for the most part, not only for the establishment of which he is a member, but, in some degree, individually for himself, natural justice holds out its sanction to this arrangement, sympathy helps to promote it, and self-advantage to sweeten it.—Acknowledged community of interest will enable the willing to spur the lazy, without exposing themselves to the reproach of officiousness or ill-nature.—Working for sale would, unless laid under restraints by superior authority, expose individual competitors to universal ruin: self-supply injures nobody—affords ground of complaint to nobody. In the case of an individual, indeed, the principle of self-supply is repugnant to good economy, and is the forced resource of a nation little advanced in the career of opulence: for in that case, in as far as the application of the principle of self-supply extends, the benefit of the labour-division principle is foregone. But in this vast populous establishment, affording within itself the means of carrying the division of labour—not only to the ordinary pitch, but beyond it,—the two principles act in conjunction, and the operation of each is favoured by the assistance it receives from the other.

Section IV. Working Hands—*Motives: End* view,—the extraction of labour to as great a value as may be, consistently with the regard due to health, customary relaxation, and the observance of religious duties. N. B.—The principles exhibited in this section, as subservient to that end, are but so many applications of the *Duty and Interest-junction* principle.

17. *Self-liberation* principle. No relief but upon the terms of coming into the *house*, (i. e. an industry house,) and working out the expense;—till then no enlargement.

18. *Earn-first* principle.—When ability adequate to the task is certain, and laziness apprehended, no meal given, till the task by which it is earned has been *first* performed. The *self-liberation* principle is sufficient, without the *earn-first* principle, in the instance of *adequate ability hands:* such alone excepted, if any such there be, who would prefer idleness and confinement to industry and liberty. For these the addition of the *earn-first* principle would be necessary; but principally to those who, though habitually able to earn more or less *towards* their maintenance, are not able to earn the *whole* of it. Without this, or some severer and less unexceptionable spur, the lazy among them would do nothing. As to those who come within the operation of the *self-liberation* principle, whether a man works more or less, makes no difference to the Company: the better he works, the sooner he is out: the less he works, the longer he stays. So far as the operation of this principle extends, the Company need never be a loser, but may be a gainer if it pleases: utmost expense of maintenance per head per day, of an able-bodied male, not so much as 4d. average value of the lowest paid species of labour, not so little as 1s. Humanity, however, will not be the only check upon the abuse of rating the value of the relief too high, or, what comes to the same thing, the value of the work performed, too low: since, the worse terms the Company afford to *self-liberation* hands, the fewer they will have; the better the more. It is only by the combination of the *self-liberation* principle with the *earn-first* principle, applied, the one or the other, according to circumstances, that *voluntary* charity is reconcileable with *industry*, or *compulsory* charity with *justice*. Employment for *lazy* hands, (to be administered upon the *earn-first* principle,) should be —1. Certainly performable. 2. Exactly measurable: *ex. gr.* turning of a wheel for grinding, &c.—or for raising water—so many *turns* made, so much work done.—To husband this sort of work, give a new hand the option between a greater quantity of this sort of work, and a less quantity of a sort which is more wanted, but, in respect to which the quantity, or the relative ability of the workman, is less free from dispute: *ex. gr.* digging, wheeling away, carting, hedging, gathering, chaff-cutting, weaving, picking, sorting, &c.

19. *Piece-work*, or *proportionable-pay* principle.—The application of it seems confined to three cases: 1. That of the *relative extra-ability* hands among the permanent stock: *i. e.* those who, though not capable of earning a full maintenance elsewhere, are capable of earning more than a maintenance in this establishment—the Company keeping up a fund of employment, such as is not to be had elsewhere, and affording maintenance cheaper than it can be had elsewhere. 2. Among these may be reckoned the *extra-ability* part of the *apprentice* stock; who cannot earn a maintenance elsewhere, because they are not yet permitted to *go* elsewhere. 3. The case of *encouragement-money* given out of earnings. If a man cannot be maintained in the establishment for less than 3d. and he cannot, in the way of piece-work, earn more than 2½d. nothing is to be got by the Company by paying him the whole of his earnings, and making him pay for his board, instead of finding him in board, and working him upon the *earn-first* principle.—Caution necessary in the application of the *piece-work* principle, where badness of quality may be masked—*ex. gr.* in those parts of a house or ship which are covered up—inside brick-work, caulking, &c.—or where despatch, under the spur of the reward, threatens to be productive of *bad workmanship* or *waste*. Caution in favour of *health*, especially in the case of the apprentice stock. Many, under the spur of the *piece-work* principle, injure their healths, and shorten their lives. But the mischief is probably owing, in a considerable degree, to fermented liquors: by the use of which such excessive exertions are commonly accompanied

Digitized by Google

and supported, and which would have no place *here*.

20. *Peculiar-premium, prize-giving*, or *competition-excitement* principle.—Advantages: 1. By paying one or a few victors, you get the result of the extra-exertions of the whole multitude of competitors. 2. This combines well with the *piece-work* principle:—nor does either supersede the other; some being more taken with the certainty of a smaller reward, others with a chance of a larger one:—the degree of excitement, and thence of exertion, is thus rendered greater than it could be even by the *certainty* of a reward to the same amount, in a state of insulation.

21. *Honorary-reward* principle.—This is mostly an application of the *Peculiar-premium* principle, and the class of hands, to the circumstances of which it is more particularly applicable are, the *unripe* hands. In this shape, reward costs nothing.—Examples: 1. Superiority of *seat*, at table or elsewhere.* 2. *Precedence* in processions, or other public exhibitions. 3. Promotion to a *higher class* or form, *i. e.* to a form already occupied by children standing higher on the scale of acquirments, and mostly of a higher age. 4. *Distinction* in *dress*, with or without addition for the purpose of *decoration*.—Query, which is the greatest? The *good* done by the exercise of useful exertion, or the *mischief* by the suffering produced by the ferment raised among the dissocial passions—disappointment, dejection, envy, jealousy, revenge.—The good is supposed to predominate considerably: but all possible care should be taken to reduce the mischief to its *minimum*.

22. *Separate-work* principle, or *performance-distinguishing* principle.—This is the basis of the foregoing principles: without this, neither punishment nor reward:—especially no punishment. Rules: 1. Where tasks can be separated, avoid *gang-work*. 2. Where gang-work is inevitable, the *smaller* the gang the better. 1. Because the fewer the workmen whose work is thus blended, the easier each man's share in the work may be distinguished. 2. Because, if a reward be given to the gang, the smaller the gang, the larger the share which each man's own exertion procures for him. N. B. If the gang be not large, by shifting the hands from gang to gang in the same work, the share contributed by each to the result of the joint-work, may be obtained separate. 3. Where the reward is divisible, to spur a *lazy* hand, join him with a willing one: viz. if the arrangement be temporary: for, if it be permanent, despair and resentment against injustice, will be apt to slacken the exertions of the industious hand, and reduce them to a level with those of his unindustrious partner. 4. In work for self-supply, allot to each individual what he has individually been concerned in producing: he will then be his own rewarder and his own punisher, according to the goodness or badness of his work. 5. Giving him the *last* choice, may, in some cases, be a means of bringing his workmanship to a uniform pitch of goodness. 6. In work for sale, the price fetched by the work of each gang, and if possible of each individual, should be noted, that the reward, if any, may be proportionate.

Section V. Working Hands—*Fare:* 23. *Suitable-fare* principle.—Charity-maintenance—maintenance at the expense of others, should not be made more desirable than *self*-maintenance. Fare consequently the cheapest that can be found, so it be nourishing and wholesome—for, if there be any cheaper in use, it must be among the self-maintaining poor.—*Luxury*, being a relative term, is applicable with as much propriety to the diet of the poor as of the rich. Luxury, if it does *not* render the condition of the burdensome poor more desirable than that of the self-maintaining poor, fails of its purpose: if it *does*, it violates *justice*, as well as *economy*, and cuts up *industry* by the roots.—This extends not to any who may have earned, though it be in the establishment, more than the expense of their maintenance—since these are not *burdensome*, but *self-maintaining*:—nor to any extra comforts, purchased with any such *peculium* share of earnings, the allowance of which, is productive of a value more than equal to the expense, although the whole amount of a man's earnings should fall short of the whole expense of his maintenance. Example: Expense of maintenance, say 2s. a-week; ordinary earnings, 1s., if, by giving fifty per cent. encouragement-money for extra earnings, you can make him earn 1s. 6d. you save 3d.; and the 3d. he spends and costs over and above the 1s. does not go counter to the principle—although it should be clear that a self-maintainer of the same degree of ability *without doors*, would not earn above the 1s.

24. *Habit-respecting* principle.—This principle is the antagonist of, and a check upon, the former: its application is merely temporary, confined to the existing stock of *old-stagers*. How far, in consequence of habits of luxurious fare, contracted under the existing plan of poor-house provision, (how uncomfortable soever upon the whole,) the *Suitable-fare* principle should be departed from in the instance of that stock, is a problem for the humanity and discretion of the company to solve. (See Ch. vii. *Diet*.)

25. Principle of *Sobriety* or *No-fermented liquor* principle.—1. Fermented liquor, even of the weakest kind, is a drink not natural to the human frame. 2. In as far as it is fermented, it contributes nothing to health or nourishment. 3. In its abuse it is the most

* Employed at Westminister and other schools: boys of the same form taking place of each other each day, according to the success they have respectively had on that day in the species of competition called *challenging*.

Digitized by Google

fertile of all sources of vice and misery.—4. No line can be drawn between the use and the abuse.—Some constitutions are kept in a state of perpetual intoxication by small beer. —5. Perfect health reigns where fermented liquors are excluded,—proved in the instance of the *Philadelphia* prison.

Section VI. Dead-Stock.—26. *Wholesale-purchase* principle.—27. *Refuse-employing* or *Save-all* principle.—These are but applications of the *ample-scale* principle. On a scale of such magnitude no species of refuse but has its value: all animal—all vegetable substances—if good for nothing else, are valuable as manure. (See the paper of the Board of Agriculture on manures.) But before their arrival at this state, many are the articles that may have gone through more stages than one in the scale of *degradation*. (See Ch. x. *Book-keeping*.)—28. *Use-multiplying* or *Several-use* principle.—An article being deemed necessary, observe whether it may not be rendered applicable to more uses than one.—Examples: 1. Each *room* serving for work, meals, sleep, and devotion: the consecrated part being let down from above at chapel-times.—2. *Married bed-stage partitions* serving for *circumferential privacy screens*.—3. Single ditto, serving for forms, working-tables, &c.—4. The bed-stages themselves all capable of serving for *tables*. (See Ch. vii.)—5. *Straw* for beds, employed first for *men*, and then for *cattle*.—6. The whole establishment applied to the several different purposes of a *poor-house*—an *hospital*—a house of *correction*—a *prison*—a *pawnbroking* establishment—a *bank* for the poor—an *inn* for the poor, &c. &c., without prejudice to any, and much to the advantage of many, of the objects in view.—For the application of this principle to *actions* as well as *things*, see Ch. xii. *Pauper Education*.

Section VII. Non-Adult Hands.—29. *Apprenticeship* principle.—No relief to a pauper within the latest age at which it is usual for a child to be bound apprentice, but on the terms of being bound to the company till full age. Advantages: 1. To the child instruction, intellectual, moral, and religious; inbred habits of systematical frugality—certain security from vice and criminality—certainty of employment during the apprenticeship, and ever afterwards—chance of promotion to rank and affluence. (See *infra*, *Indigenous-promotion* principle.) Condition, upon the whole, more than upon a par in point of happiness with that of an individual of the same age in the world at large. (See Book iv. *Pauper Comforts*.)—2. To the *Company*, and its copartners the *rateable parishioners*—a fund of increasing profit, at the end of twenty years, and ever afterwards, more than equal to the amount of the present poor-rates. (See Book v. Ch. ii. *Pecuniary Estimates*.)

30. *Talent-cultivation* principle.—Natural talents of any kind, manifesting themselves in an extraordinary degree to receive appropriate culture. Examples: Musical habits principally:—viz. an extraordinary fine voice, or an extraordinary good ear, and thence affection for the pursuit. (In the instance of a natural taste for the arts of *design*, or of strength or comeliness adapted to *dancing*, or other *theatrical exhibitions*, superiority is less manifest, culture is less exceptionable in the eyes of a severe moralist, and the object is of inferior account.)—Advantages: Comfort and consideration of this part of the pauper community increased.—Importance and desirableness of the condition of a Company's apprentice raised. For the importance of music, as an assistant to instruction, intellectual, moral, and religious, see Ch. xii. *Pauper Education*.

31. *Fellow-instruction* principle;—a branch of the *Indigenous-promotion* principle.—The children themselves to be employed in the instruction of their *fellows*; the more advanced, in the instruction of the less advanced:—as much of the instruction as possible to be given upon this plan—in time the whole of it may.—Advantages: 1. Saving in the *expense* of superior instruction. 2. On the part of the *pupils*, *comfort* increased: the impression of awe, and idea of coercion being in great measure removed. 3. *Progress accelerated*—the alacrity being increased, and the analogy of ideas betwixt teacher and pupil closer. 4. On the part of the *teacher*.—Comfort increased, in respect of the pleasures of superiority and command. 5. Progress accelerated: the knowledge acquired by *teaching* being much more perfect than what can be acquired by simple *learning*: in the one case the mind being in good measure *passive*—in the other completely *active*. To the cultivated mind of a master, the task of perpetually dwelling on ideas of no higher rank than those which are upon a level with the capacities of children, is a wearisome and fastidious task. In the case of the *pupil-instructor*, the task which he has but just ceased to learn, in quality of pupil, is some time before it has lost its relative importance in his conception in his new quality of tutor; and when it has, it is exchanged for a higher. 6. Preparation for the application of the *indigenous-promotion* principle, by appointing the *quondam* apprentice to the higher offices of the establishment.

32. *Indigenous-promotion* principle.—From the time that the institution has been long enough on foot to have laid a suitable foundation in point of education, none of the officers (unless perhaps the chaplain) to be chosen elsewhere than out of the establishment, viz. out of the apprentice stock.—Advantages: I. To the Company's wards, hope, encouragement, and consideration. II. To the Company—1. Certainty of fitness, in respect of suitable education, character, experience, and probation—2. Saving in respect of expense of salaries. A given allowance, administered to persons whose habits of expense have been of the very lowest rank, will go proportionably farther,

Digitized by Google

than if administered to an individual trained up in the profuse habits of the world at large.

Chap. V. Official Establishment. Section I. *Officers—Numbers and Functions*—the same in every Industry House.—1. Governor. 2. Chaplain. 3. Medical curator. 4. Schoolmaster, to act likewise as secretary. 5. Organist to act on Sundays as music-master, and* on week-days as a clerk. 6. Governess, for the female part. 7. School-mistress, for the younger part of the female apprentices. 8. Matron, or head nurse, for the infant part—to act as midwife. 9. Husbandry bailiff. 10. Foreman and forewoman, at first, for the several employments. —Impossibility of determining with exactness, previously to experience, the exact number of officers requisite: two functions may be exercised by the same individual; or several individuals may be requisite for one function.

Section II. *Pay.*—In most instances, the greatest part of the emolument must wear the shape of a fixed salary from first to last: the value of the service actually rendered by each individual, not being capable of being exhibited in any such precise quantity, that the quantum of the reward shall be capable of being made to rise and fall with it. Governors must, at the outset, be in great measure, if not altogether, upon a salary: in process of time, as the expenses and returns of the establishment become ascertained and known, they may be paid upon the footing of *contract* or *partnership*. Till the apprentice stock has produced individuals ripe for this as well as the other offices, the emoluments being fixed, it might be sold by auction to candidates possessed of certain qualifications: power to the Company to revoke the appointment at any time on payment of the purchase-money. The *price* a man gives, will be a proof of the *degree* of his *inclination* for the *business* of the office; thence of his fitness, as far as depends upon inclination. The other exceptions regard the officers to whose functions the application of the *life-assurance* principle is extendible—the nurse receiving the whole of her emolument, and the medical curator a proportionable part of his, and so, perhaps, the governor and governess, in the shape of annuities on the lives of the apprentice-children under their care, up to a certain age. (See Ch. iv.)

Section III. *Powers and Restraints.*—Except as undermentioned, the authority of the governor to be absolute over the whole establishment; but no act to be done without the *privity* of the rest of the officers: each being rendered responsible for every act of the governor to which he does not enter his dissent; and the entry of each act being accompanied with a memorandum, stating what officers were present, and which, if any, absent at the time. Cases to be specified in which, to prevent any such mischief as would be irreparable, the *veto* of the chaplain or surgeon shall be sufficient to suspend the execution of any order of the governor, until there shall have been time for the pleasure of the Direction-Board to be made known.—Examples: 1. Danger to the security of the whole establishment by fire or water. —2. Danger to the *safe custody* of the apprentice stock, or stock of *self-liberation* hands; especially such as belong to any of the *dangerous* or *disreputable classes.* 3. Danger of communication of *infection*, or danger of *life* and *limb* to any individual in the establishment.—4. Danger of violation of the principle of *separation*, as between class and class.—5. Mischief, by the cutting down, destroying, or damaging *timber*, or other *trees:* the mischief in each case being such, as, were it not for the *veto*, might take place before the intimation of the pleasure of the Board could arrive. Contracts of *purchase, sale, hire,* and *loan,* such as are made in the local establishment, and not by the general Direction-Board, to be made *by* the governor, but with the *privity* of *all* the officers of both sexes. In cases that will admit of suspension, power to be reserved to the Direction-Board, to disallow any such contract within a limited time; these, like all other acts, being reported to the Board in weekly or daily course. No officer to be ever absent for a day together, without a *substitute* chosen by himself; but liable to be disallowed by the governor singly, or by any two other officers—the principal to be peculiarly responsible for the conduct of the substitute. The substitute to be, in the case of the chaplain, a minister in holy orders: in that of the *medical curator*, a person who has undergone such tests of capacity as shall have been established for the purpose. Power to each officer to take an *assistant* or assistants, upon the same terms as specified above, in regard to substitutes. Each officer will thus have the faculty—not indeed of *appointing* his successor, but of placing any one whom he is disposed to favour, in a situation which will *naturally* afford him an *advantage* in this respect. The power of nomination remaining in the Board, no detriment seems likely to ensue from such a privilege: the choice of a person, for whose conduct the chooser is personally responsible, affording as fair a presumption of fitness, as a choice made by an irresponsible member of the General Board. Each officer to be responsible to the Board, for every instance of misbehaviour, or proof of manifest incapacity, exhibited by any other, if within a certain time he does not give information thereof by minute in the books; taking care that a copy of the minute be transmitted to the Board. The plea of self-preservation will thus afford a shield against the imputation of officiousness and ill-nature. All the official acts to be exercised in the *common room;* viz. the central lodge.

Section IV. *Encouragements.*—Rich and honourable source of encouragement, were it the

* For the means of defraying the expense of the salary of the music-master without charge to the Company, see Ch. xii.

Digitized by Google

pleasure of his Majesty to confer the honour of knighthood on a select number of such of the governors, as should have distinguished themselves in the humane, upright, intelligent, and dignified, exercise of their office:—also to bestow some of the church sinecures on some of the chaplains; but tenable only during their continuance in the exercise of that laborious and useful office.—Might not an arrangement of this sort help to protect the church establishment from obloquy?

The Company at the end of every year to present pieces of plate, in the way of premiums, to such of the officers of the two hundred and fifty houses—governors more particularly—as shall have distinguished themselves in their respective situations. The act of remuneration to be grounded, in every instance, on *specific*, and specified, exemplifications of merit, with reference to the evidence presenting itself in each instance, as apparent on the face of the books. A thousand or two a-year thus expended would go a good way, and probably produce ample repayment in the way of zeal and useful service.

Section V. *Visiters.*—All magistrates and clergymen, resident in the county, visiters *ex officio*. Power to inspect the books, especially the *complaint*-book; (See Ch. x. Book-keeping)—examine persons, and make minutes. The *power* might be coupled with an *obligation*, to be performed (suppose once a-year) in the instance of those resident within the pauper district, belonging to the industry-house. In the case of the ecclesiastical visiters, especially those resident at a distance, a small fee, fixed, or increased with the distance, might be a reasonable accompaniment to the obligation. The whole establishment, with its two thousand members, being inspectable, and every member of it examinable, sick or well, from a single station, (the centre lodge,) the time thus required to be bestowed will not be great.

Chap. VI. Diet.—Diet about two-thirds of the necessary *quantum* of expense.—Distinction between diet for the *new-comers*, and diet for the *old-stagers*.*—*Necessity*, in respect of life and health, is the only standard in the former case; *habit* may prescribe an addition to the expense in the latter. (See p. 384, *Habit-respecting principle.*)—In the case of the new-comers,—*animal* food—meat—is the great source of expense—The greater part of mankind use animal and *vegetable* together; many, however, use vegetable only: *ex. gr.* the *Hindoos*:—some, animal only, viz. the *Esquimaux*, and other inhabitants of the regions too cold for vegetation—also some *Tartar* nations.—It is not clear that the latter are healthier or stronger than the former.—Whether a *mixture*, of animal food with vegetable, be more advantageous in point of health and strength, taken together, than vegetable alone, and if so, what proportion is most advantageous, is a matter of experiment in the highest degree interesting, never as yet tried, but which might be tried with the utmost advantage, in the proposed establishment, in the instance of the *indigenous* branch of the apprentice stock.—Bread is uneconomical—not only as being the result of an expensive manufacturing process, but as being considered as an *appendage* to *meat*, and thence impressing the idea of a *want* of meat. Bread and water, a penal diet in England, more expensive than the ordinary diet in Scotland.

I. Non-adults: especially the *Indigenous* and *Quasi-Indigenous* Classes.—Taking the cheapest food in point of *quality*, experiments should be made for ascertaining the most advantageous *quantity*. The *lowest* step in the scale, a quantity greater, in a known proportion, than the least quantity consumed by an average child of the same age among the husbandry part of the self-maintaining poor in Scotland—This ascertainable, with great precision, from the observations made by the Guardians of the Poor at Glasgow. The *highest* step, the quantity consumed by an average child of the same age, to whom as much is given as it will eat. Gradations to be marked out at equal intervals between these two points.—Difference to be tried between *two* meals a-day, and *three*—whether any, and how much, more is consumed at three than at two;—the *quality* the same,—*quantity* at option, as before:—and, if more is consumed, whether any, and what difference in point of *strength* or *health* be the result.—*One* a-day, and *four* a-day, hardly worth trying.—The two *sexes* to be compared to each other for this purpose, at the different *ages*.—Health being the mere *negation* of *disease*, if their be no disease in any instance, (which is the most probable, as well as the most desirable, result,) no indication in this respect will be afforded: in that case, as far as health is concerned, the *smallest* allowance is preferable, as being *least expensive*.—Difference between *general* strength, and *particular* or *local* strength. The human frame to be examined in this point of view—Some muscles stronger in some subjects, others in others—even where, in point of *general* strength, there may be no difference.—*Tests* of strength to be established—a single species of exertion, such as running, lifting, rowing, turning a wheel, &c.—each taken singly—is not of itself an adequate test of *general* strength, for all varieties in point of organization.—The proper tests for this purpose, are the exertions made in the several employments in actual use:—the experiment having by this means a direct application to *practical* use.—The effect of differences in point of *quantity* being ascertained, another class of experiments may regard the effect of differences in point of *quality*, i. e. *species* of food, each species taken apart; and another, of the effect of *mixtures*.

* Those who, upon the opening of the establishment, are transferred to it from the *existing* poor-houses.

Digitized by Google

II. Adults—(*New-Comers.*)—A *fixed dietary* would be irreconcileable to economy; since the proportions in point of price, as between article and article, are subject to great and continual variation. So, likewise, a *fixed* allowance in *money;* since the same quantity of money will purchase as much again of any given species of food, or even of that which is cheapest at the time, at one time as at another: and, by an improvident application of a *limited* sum, famine might be produced.—The following course seems the proper one for the Direction Board to take. Give a list of *rations*, of different sorts—the more numerous, the better—all regarded as coming within the price proposed. Give to the governor of each house the option, as betwixt *these* several rations; allowing him even to employ, or at least to propose, *others:*—but on condition of their not exceeding a fixed price.

III. Adults.—*Old-Stagers.*—*Paupership* habit, is the habit principally to be considered in this case; the *original* habit, acquired during the *self-maintaining* state, having been more or less superseded by it. The paupership habit, instead of being *less* luxurious and expensive throughout, is, in the instance of those maintained in the way of *community*-maintenance (*i. e.* in poor-houses, howsoever denominated) invariably, and in an enormous degree, *more* luxurious and expensive.—Original habits are determined mostly by *professions*, though in some degree by territorial *situations:*—the agriculturalist, the lowest paid of all classes. In community-maintenance, the habit has generally been adjusted to the habits of the best-paid classes, though influenced more or less by territorial situation. Difference in this respect between *bread* countries and *meal* countries; and among bread countries, between *wheaten* bread countries and *inferior* bread countries—viz. rye, barley, oaten, and pease-bread countries. Meat is the great article of excess in the existing poor-houses.* Whatever degree of indulgence it may be thought fit, in consideration of acquired habits, to extend to the *old-stagers*, they should be dieted apart from the *new-comers.*—Briefly thus—*two tables*—*New comers'* table, and *old-stagers'* table. This to save the new-comers from the pains of regret and privation, and from the dissocial emotions and affections of envy and discontent.

Should any *retrenchment* be deemed advisable, *voluntary* charity will remain as a resource for the amount of the difference. (See Book iii. Ch. xiii. *Voluntary Charity assisted*—and Book iv. *Pauper Comforts.*)—*Fish* a contingent resource, in situations and seasons affording a *glut.*—Expectations entertained of a mode of *curing*, by which the benefit may be extended to all seasons and situations.—Conduct with regard to the mode of retrenchment.—1. Diminishing the *number* of meat-days.—2. Diminishing the *quantity* of meat on each day.—3. Diminishing partly the number of days, partly the quantity on each.—Saving by inferior *pieces*, a casual resource, depending on local situation:—the amount limited, since the *ratio* of inferior to superior cannot be increased. The distinction being principally the result of prejudice and caprice, differing widely as between country and country, any considerable increase in the relative demand would raise the price. In great towns, many parts, considered elsewhere as delicacies, and in vain coveted in country places, are degraded in saleable value, and even reprobated as unfit for man, by being denominated according to the demand made of them for the use of inferior animals. The principle of *self-supply*, though applied to this article, would not altogether supersede the distinction between superior and inferior pieces; since the superior, fresh or preserved, might be reserved for sale, and the inferior, in greater quantity, purchased with the price. This mode of retrenchment, a point of great delicacy: the settling of it, as far as can be done, by *resolutions*, conceived in *general* terms, a proper subject for the authority of Parliament. The execution ought not at any rate to be *sudden:* time should be allowed to the class in question to accommodate themselves to their new situation, and experience the benefit of it in *other* points of view.

Chap. VII. Clothing, Bedding, &c.——I. Clothing.—Two points to be attended to—*frugality* and *distinction*—the latter, for the purpose of separation and aggregation—(See Chap. ii.)—*Frugality.*—1. Materials, the cheapest, so as to afford sufficient warmth. 2. Form, excluding all useless parts—such as skirts to coats and waistcoats—brims to hats—unless it be in the heat of summer, for protection against the sun; for which purpose straw would be preferable.—*Necessity* and *use* the standards—not *fashion*—though fashion has of late been approaching nearer and nearer to use.—*Distinction*, principally by colour—*form* being determined by frugality. In default of a sufficient number of cheap colours sufficiently contrasted, shreds of one colour, applied to a ground of another colour, might be employed.—*Shoes* with *wooden* soles, used in many country places, and even in London, under the name of *clogs*, Saving on this score alone, 3s. 6d. a head, in the instance of adults: about £40,000 or £50,000 a-year, in the whole.—In summer, no *stockings;* but the leg covered, or nearly so, by a prolongation of the breeches; which at that part may be repaired by piecing,

* Curious scale of fare compared with the qualities of the persons maintained—*Self-maintaining* poor, meat scarcely *one* day out of the seven—(Eden on the Poor *passim.*)—*Burdensome* poor, upon an average of seventy-seven houses, *four* days out of the seven. (Taken, on examination made in this view, from Eden.) *Convicts* of the worst species, and *enemies*, *seven* out of the seven. In the latter instance, *quality* advertised for, *the best*, and *quantity* excessive.

Digitized by Google

more advantageously than stockings by darning. In winter, stockings might be added, or rather *hose:* *i. e.* stockings of woven cloth, as being more advantageously repairable.—At the parts most exposed to wear, viz. under the arm-pits, between the thighs, and at the elbows, linings, for strength, of shreds of *leather*—a species of frugality already in use.—For coverings of shoes, in place of, or in addition to leather, the materials of cast-off coats and waistcoats might be employed—or, for women's, gowns and petticoats—such as could not be applied with more advantage to other uses.

Soldiers wear *uniforms*, why not paupers?—those who save the country, why not those who are saved by it? Not the *permanent* hands only, but likewise the *coming-and-going* hands should wear the uniform while in the house, for order, distinction, and recognition, as well as for tidiness: being charged at a fixed rate per day; reserving to them the option with regard to shoes and stockings.

Clothing would be made, all of it, by the strength of the establishment, according to the principle of *self-supply:* but this would make no difference in point of *relative* cheapness and dearness, as between material and material; the quantity of *labour* requisite being the same, whether home-made, bought, or sold.—For the particulars, see Book v. Ch. ii. *Pecuniary Estimates.*

II. Bedding.—For the Bed-stages, see above, Chap. iv.—Bed, stuffed with straw:—one side covered with the cheapest linen or hempen cloth, for summer; the other, with coarse woollen for winter.—Stretching the under sheet on hooks, pins, or buttons, will save the quantity usually added for tucking in:—in cold weather, that the woollen may be in contact with the body, the sheet might be omitted. Rug, and two or three blankets:—upper sheet of no greater width than the cell, and tacked on to one of the blankets. Bed, one for the whole stage, or a separate one for each cell; and so the under sheet.—The advantages of separation are, superior portability; each bringing and stowing away his own bed without embarrassment or delay; and that in case of uncleanliness, the annoyance may be confined to the author of it. Straw, the more frequently changed the better, particularly in the warm months.—To the extent of the quantity wanted for littering cattle, the change will cost nothing; and beyond that quantity the expense will be only the difference between the value of the straw, as straw, and the value of it, as manure.

Chap. VIII. Employment.—The grand point is, to suit the nature of the employ to the nature of the hands.—The only difficulty is to find employment of a nature suited to the *unwilling* hands, and the *infra-ability* or *inadequate-ability* hands.* The quantum of this sort of employment requisite for the population (when complete) of each Industry-house, will of course depend upon the population of these two classes of hands. A stock of *easy*, or *any-body's-work* employment, having been found in a quantity adequate to the number of *difficulty-employed* hands, the difficulty is at an end. *Self-supply* is a principle particularly fruitful in *any-body's-work* employments.—In the agricultural branch, most of the operations being suitable to unexercised, many to feeble hands: in the clothing branch, most to feeble, many to unexercised hands. The stock of *every-man's-work* operations being increased more and more by the division of labour, (which in this scale of unexampled amplitude may be carried to an unexampled pitch,) the stock of work adapted to these *confined-ability* hands will receive a proportionable increase.

To afford the extra stock of labour suited to the extra demand in time of war, or preparation for war, each hand, exercising a war-trade, must be prevented from employing in it more than a certain part of his time (say three or two days out of the six) in peace: otherwise whatever accession to the national stock of *war-employment* hands were afforded by the Company's apprentice-stock of hands, would only drive out, or keep out, so many free hands; and there would be no more to spare of the sort of labour in question—no greater fund of capacity for that sort of labour lying by and unemployed *then*, than there is *now*. The advantage derivable from the *employment-mixing* principle, is peculiar, in great measure to such a company and its hands: since "*no man can serve two masters*," nor, in general, the same master-man carry on, without disadvantage, two or more unconnected trades.

Local advantages appurtenant to the situations of the several Industry-houses, may afford employments, to a value which in part might otherwise be lost; and those such as would be

* Those whose *natural* ability, with reference to labour, is decidedly below the necessary expense of their maintenance. This will include, 1, *Feeble* hands—as to a considerable part. 2, *Unripe* hands, up to a certain age—younger or older according to the management. 3, *Sick* hands—during the continuance of the sickness.—The unripe hands being capable of paying, with a profit, before maturity, and the sick after recovery, the feeble hands, together with such of the unripe and sick hands as die insolvent, (together with the few able hands that may chance to die in the same case,) are all that contribute at the long run to the *necessary* burden in point of expense. All others may be termed *adequate-ability* hands: most of whom will, of course, be *extra-ability* hands.

Confined-ability hands—those who may be able to do as *much* work as able hands in general;—only it must be of a certain *sort*—or preceded or accompanied by *instruction* or *attendance* of a certain sort, are—1, Insane hands (divers sorts.) 2, Imperfect hands. 3, Sick-and-well hands. 4, Tender hands. 5, Past-prosperity hands. 6, Of the dangerous and other disreputable classes, such as have been bred up, or confirmed, in habits of idleness or dissipation—but this only for a time.

Digitized by Google

less apt than others to interfere with private trade. Examples: Stone-cutting—brick-making—mining—fishing, with the preliminary employments subservient to it—such as ship-building, sail-making, &c. The quantity of work performable in these *subservient* employments, might be confined to the supply of the Company's own demand.—No more vessels to be built, &c., than what the Company employs. In regard to husbandry-work for individual farmers, the Company might restrict itself, or be restricted, to rates regarded as excessive; say, all beyond double the ordinary rate: the object being not to deprive self-maintaining hands of any employment, nor even of any such advantage as would be a reasonable compensation for casual want of work, and want of adequate pay in winter time—but only to get this or that work done, which might otherwise not be done at all—not being capable of being despatched in time, with all the labour that could be afforded by the obtainable stock of self-maintaining hands.

With regard to the pouring in hands into *over-paid* employments, whether in the view of taking the benefit of the excess, or (what would be the necessary consequence) for the purpose of reducing it, this advantage would be open to the Company, as well as to private masters, and private hands. The fund of information created by the *Employment-Intelligence-Office* plan, would be alike open to all parties interested. See Book iii. Ch. i. *Employment secured.*

In regard to the choice of employments, and the prudence of hazarding the necessary expense of such parts of the dead stock as might be requisite to a certain branch of industry, and could not, without loss, be transferred to any other branch, much will depend upon the *permanence* of the stock of hands capable of being allotted to any such employment: that is, in the instance of each hand, on the assurance of his continuance upon the establishment for a term not less than a certain time. The great and general uncertainty in relation to this head, is one of the most powerful and insuperable obstacles to productive economy in poor-houses, in the existing order of things.—(See Book v. Ch v. *Prospect of Success.*)—Hence an important division of the population of a proposed Industry-house, into—1. *Coming-and-going*, or *short-staying* stock of hands—2. *Longer-staying* stock—3. *Permanent*, or *standing* stock.*

Owing partly to the permanence of their situation, partly to their aptitude for receiving a suitable education, it is the labour of the stock of *unripe* hands, in their quality of *apprentices*, that would constitute the chief basis of the Company's profit-seeking arrangements.†

* I. *Short-staying*, or *coming-and-going* stock.—1, Sick hands. 2, Child-burdened hands. 3, Casual-stagnation hands. 4, Periodical-stagnation hands. 5, Out-of-place hands. 6, Disbanded hands. 7, Strange hands.—II. *Longer-staying* stock:—viz. as lying under difficulties, with regard to the obtaining of employment, over and above what exist in the preceding case.—1, Superseded hands. 2, Stigmatized hands. 3, Suspected hands. 4, Unavowed-employment hands. 5, Beggars. 6, Unchaste hands. —III. *Permanent* or *standing* stock: composed in one instance of those, who, by *positive* institution, are proposed to be fixed within the pale of the establishment for a long and determinate time; and as to the rest of such as, in virtue of their *natural* state and condition, are likely to remain for a time altogether undeterminate, and not likely to be of short continuance, and, in some instances, not likely to terminate but with life.—1, Unripe hands, or apprentice stock. 2, Among insane hands, all whose cases are looked upon as *incurable.* 3, Feeble hands. 4, Imperfect hands. 5, Sick-and-well hands (some sort). 6, Tender hands. 7, Past-prosperity hands.

† According to a calculation, in which the value of earnings was taken at a rate supposed to be too low, and the expense of maintenance, at a rate supposed to be too high, the neat value of the service of a male child, from birth up to twenty-one, after all deductions on the score of death and sickness, appeared to be £23, 3s. 5d. and a fraction, payable at birth;—increasing, of course, with each year of age, up to a sum amounting to £66, 12s. 5d. and a fraction, at the commencement of the eighth year of age:—from which period, on account of there being fewer and fewer years of *positive* value to come, it went on diminishing. In this calculation, there is nothing but what is perfectly consistent with the known and indisputable fact of the universal burdensomeness of children, in the existing order of things, in all ranks of life, and in particular among the self-maintaining poor. In the early stages of the period of non-age, a large proportion of the natural value, or capacity of yielding a clear profit, is lost, by lying unemployed, for want of time, opportunity, intelligence, and capital, on the part of the parents, to turn it to account: in the *latter* stages, by the dissipation of the produce by the minor himself, (rendered independent of his parents by the faculty of self-maintenance,) in the habitual purchase of luxuries, to an amount which is more than equal to that of necessaries; as is demonstrated by his being obliged and able to do without them, when, out of the same earnings, he has a wife and children to maintain, in the married state.—(See Book iii. Ch. ii, *Mendicity extirpated;* Book v. Ch. v. *Prospect of Success;* and Book iii. Ch. v. *Frugality assisted.*)—Under these circumstances, no wonder that the pecuniary value of a child, reckoning from the beginning to the conclusion of this period, should be generally regarded as *negative*, in this country; especially considering that it really is so—in a high degree, and without any exception—in the case of the superior and liberally-educated classes:—that is, in the experience of all who either write or speculate upon the subject.—For the particulars of profit and loss upon this part of the Company's stock, see Book v. Ch. ii. *Pecuniary Estimates:*—and, for the mode of taking account of it, see, in the meantime, the heads of a *Non-adult-Value-Table*, by the author, in ANNALS, No. 167, vol. xxix. (*supra*, p. 365.)—*To give a positive value to an average child*—is a problem, the solution of which would be an inexhaustible source of wealth, population, and happiness, to the state.—The proposed system bids fair to be—and it is the only one that, in the nature of things, could be—equal to the task.

Digitized by Google

What the Company supplies itself with, will be gain to the Company, without being loss to other traders: since, whatever be the value that is thus produced by the Company, value to the same amount is saved out of the poor-rates. If the whole expense of the pauper community—say three millions—were thus defrayed by the labour of the pauper-community, and the Committee were but as trustees for the rateable inhabitants to the whole of the amount, the whole of the three millions would be saved to the rateable inhabitants, and they would have so much the more in their pockets, to lay out with individual traders of all sorts. Divided, as it is proposed to be, between the rateable inhabitants and the Company, the benefit to individual traders will be the same: the only difference being, that the part which is gained by the Company, will be laid out by and for the benefit of the members of the Company; while that part only which is divided amongst—that is, saved by—the rateable inhabitants, will be laid out by and for the benefit of the rateable inhabitants.

Chap. IX. Child-nursing.—Great advantages the Company's infants would have, in comparison with those of private families,—even of the most opulent, much more of the indigent. —1. Medical curators, as well as head-nurses and nursery girls, prepared by the most eminent lecturers in this line. 2. Uninterrupted medical attention. 3. Uninterrupted nursing attendance:—nurses constantly sitting up—no avocations—no over-laying. 4. Appropriate exercise, administered by the help of machinery, in whatever quantity may prove most advantageous—not stinted by the portion of time and labour that can be spared from other occupations, as in private families.—Examples: The infants danced, as they lay in their cribs, in numbers at a time.—(See the plate.) The labour performable by the slight exertion of a *feeble* hand, the weight being taken off by a counterpoise. For airing, in conjunction with exercise, an open carriage being provided, upon a principle as simple as that of the *droshky* spoken of in Ch. iii.—the cribs (which for this purpose should be capable of being separated from each other) may be suspended from horizontal poles, supported by proper uprights. They might be drawn about in this way in numbers by a single ass; or in smaller numbers, on smaller carriages, on the same principle, by some of the bigger children.—5. A system of experiment, for the purpose of improvement, constantly carrying on on a scale covering the whole kingdom, and recorded according to an uniform plan of registration, pursued alike in every industry-house. —(See Ch. x.) 6. Attention, uniform, systematical, governed by principle:—not exposed to be relaxed by casual want of affection; or to be misguided by ignorance, prejudice, or caprice.—7. Best mode of bringing up by hand, a particular field for experiment—The great medical authorities to be consulted previous to the formation of the plan. 8. Attention sharpened by the *Life-Assurance* principle by premiums, and by the honour of publicity. Rate of vitality among suckled children the standard. Two children to be suckled by each woman delivered in the house, the woman being supplied with extra nourishment for the purpose:—mothers of bastards might be detained (say for six or twelve months after delivery) for that purpose. The great object of endeavour will be to reduce the mortality among weaned children, to a level with that of suckled children—what if still lower? Liberal premiums every year to the nurses, &c., of a certain number of the houses, in which the rate of infant mortality has proved lowest: emulation consequently among all the houses. To show how much has been owing to local situation, and how much to management, if an industry-house, in which a premium has been gained twice running, be in a situation deemed peculiarly healthy,—as in the Welsh mountains —transfer this part of the official establishment to a situation in ill repute for health,—such as the hundreds of Essex; or to any other industry-house, if there be any other in which mortality has been higher: if, under this disadvantage, the success be similar, augment the premium in proportion.—For the savings to be made in the expense of child-nursing, as compared with ditto under the existing system, see Book v. Ch. ii. *Pecuniary Estimates*—and see Book iii. Ch. xi. *Infant Mortality diminished.*

Chap. X. Book-keeping.—Peculiar extent and importance of the system of Book-keeping in an establishment of this sort—Besides being, in every case, an indispensable basis to good management, it is in the present case an indispensable security for the due discharge of the several obligations, which the Direction of the Company, and the several agents in the several local establishments, will have taken upon themselves, with relation to the various parties interested—viz. the *paupers*—their individual friends, the rateable parishioners, the stockholders, government, and the public at large.

In a small and *single* poor-house there may be neither the demand for a full and perfect system of book-keeping, nor the adequate means of satisfying any such demand: the difference between the best and the worst management that can be expected may hardly be sufficient to make up for the expense of an adequate system of registration; that is, of engaging persons competent to the task. In a system of poor-houses of the proposed extent and magnitude, good book-keeping is the hinge on which good management will turn: the demand rises to the highest pitch; and so (it will be seen) does the sufficiency of the means at command for satisfying it. With the instruction, and under the check, of an adequate system of book-keeping, the management may be better conducted by the most ordinary hand, than by the ablest hand without that

Digitized by Google

advantage; and the good management accidentally introduced by an able hand, would vanish with the hand that introduced it. *Without* this advantage, everything would be too much; *with* it, nothing would be too much. *Without* it, any single one of the collateral benefits hereinafter proposed, might be deemed visionary; *with* it, all of them together would be found practicable, easy, and secure.

In book-keeping, the *heads*—as in management, the *principles* of the system—will be governed by the *objects* or *ends* which it has in view. Of the objects or ends of action requisite on this occasion to be kept in view, the list will, as far as it goes, be the same in the one case as in the other; and will not be mnch less extensive or diversified in the case of book-keeping than in that of management itself.* Pecuniary economy, *usually* regarded as the sole object of book-keeping, will *here* be but as one out of a number; for the system of book-keeping will be neither more nor less than the history of the system of management in all its points. *Health—comfort—industry—morality—discipline*—and *pecuniary economy*—(both branches included—the *saving* or *preservative*, as well as the *productive* or *augmentative*) compose the list of objects in view in the present instance. In relation to all these points, and at each period, it is equally necessary that it should be known what, at that period the state of the management *is* and *has been*, in order that it may, in no *future* period, be suffered to grow *worse*, but in every future period be made to grow *better and better* in as high a degree as may be.

The unprecedented multitude of establishments, all requiring to be conducted upon a plan in most points exactly the same, (say two hundred and fifty, spread at equal distances over the surface of the whole kingdom,) is another circumstance which enhances the importance of the process, and at the same time gives an unprecedented turn to it. In ordinary economical concerns, the whole system of management is single and insulated: here everything is comparative; under every head, the management in each house presents an object of comparison to the management of every other. In relation to each head, the management in each local establishment has therefore two hundred and fifty times the chance of being advanced to the highest possible pitch of perfection that it can have, in any insulated establishment standing upon the ordinary footing. To profit by this advantage it is necessary that the system of book-keeping should in each house exhibit, with the utmost precision, and in the utmost detail, what the management *is*:—as, for example—under the head of pecuniary economy, what the rate of *expense* is on each of the articles *consumed* or *used*; and what the rate of expense, on each of the articles produced: that it may be seen in which of all the houses the management, in relation to each of those heads, is most advantageous upon the whole; and thence, with a view to practise, that the management of the most successful house may be taken in each instance for a pattern, and copied in every other. To book-keeping in its ordinary form must therefore be added, in the present case, a new and peculiar branch, which may be styled *comparative* or *tabular* book-keeping. To that comparison between *period* and *period*, which is so instructive, as often as it is made, in the case of any private concern, may here be added the comparison between *house* and *house*.

The plan of registration—at least the plan traced out in the first instance—cannot be too particular:—multiplied by the number of industry-houses in the kingdom, (two hundred and fifty,)—by the number of souls in an industry-house, (two thousand,)—or by the number of souls in the whole pauper population, (five hundred thousand,)—the minutest article may swell into importance. The supposition to set out upon is—that everything is to be registered, for the registration of which any use whatever can be found; then to strike off the list such heads, if any, of which the use, it is supposed, would not pay for the expense.

Multiplication of the *number* of the books would render the business—not the more *complex*, (as at first glance it might seem,)—but the more *simple*: as in manufacturing establishments, the several operations, separately considered, are the more simple, the greater the number of the hands amongst which they are distributed. Allotting to each article a separate book, would save the writing the name of that article as many times as it would occur in a general book. The quantity of matter to be entered being *given*, no addition is made to the labour of entering by any addition made to the number of the books. Books in any number may be given in charge to one hand; so long as no two, that are designed as checks to one another be given to the same hand. *Multiplication* of books, is but *division* of the contents.*

Under the proposed system of management, as the *demand* for a copious system of book-keeping is in an unexampled degree urgent and extensive, so are the *facilities* afforded to the process of book-keeping, by the peculiar plan of architecture, equally unexampled. Compactness and simultaneous transparency

* Book-keeping is one instrument in the hand of economy, *architecture* (as we have seen) another. In all these branches of art, the list of objects to be aimed at is, in the present case, the same, in as far as their respective fields of action are co-extensive.

* The names of the articles, and other heads, will be predetermined, and already entered on written or printed forms: the scribe will have little or nothing to do, but under these heads to set down *individual* objects by their *names*, and *aggregates* by their quantities.

Digitized by Google

—both of which properties it exhibits in perfection—are the principal points upon which the advantage turns. Elsewhere, the knowlege of the matter of fact requires to be communicated to the manager in chief, often through a variety of channels: *here*, it is present to all his senses, and requires only to be *preserved*.—No false musters—no running to and fro—no mislayings and huntings—no crossings and justlings, for the purpose of survey and registration:—every person, and every thing, within view and within reach at the same instant.—A degree of minuteness which might elsewhere be impracticable or unthrifty—(costing more than the amount of any advantage that could be made from it)—would be without obstruction, and without objection, *here*.*

Chronological and *Methodical*—*Elementary* and *Aggregate*—are the natural and fundamental distinctions between book and book, in a set of books, having for their common subject-matter the transactions of the same establishment—and they apply, not only to books in which *pecuniary economy* is concerned, but to all the several books that respectively bear relation to the several *other* heads of management here concerned. In a chronological book, the arrangement of the entries is governed by the order of *time* merely: in a methodical book, by some other order, according to the *purpose* it is designed to serve. Entries of the *elementary* kind are generally entered in a *chronological* book, in the first instance;† and from thence copied either in their separate and elementary state, or in *aggregate* state and expression, into a book of the *methodical* kind. Elementary entries are of course the foundation of the aggregate:—an error in an elementary article cannot but be productive of a correspondent error in the aggregate in which it is included: an error in an aggregate article may exist, without any error in an elementary one.

Considered with reference to their subject-matters, the books may be distinguished into—1. Population-books—2. Stock-books—(including accounts of articles received, issued, and consumed)—3. Health-books—4. Behaviour-books—and 5. Correspondence-books. The plans of the population-books and stock-books, (elementary and aggregate included,) including also in each instance an indication of the use, would take up so much room, that they must either be omitted altogether out of the present outline, or posted off to an appendix. Of the health-books a sketch will be given in Book iii. Ch. xii. *Useful Knowledge augmented, &c.*—To the class of behaviour-books may be referred—1. Complaint-books—2. Misbehaviour-books—3. Black, or punishment-book—4. Red, or merit-book.

Idea of a complaint-book—I. *Objects* of complaint to the pauper inhabitants of any house—1. Fellow inmates of the same house—2. Officers of ditto—3. The general plan of management—as manifested either by the established practice, or the rules and orders of the house—4. Paupers of other houses—5. Officers of ditto—6. Strangers at large. II. *Complainants* against the pauper himself may be—1. Fellow inmates of the same house—2. Officers of ditto—3. Paupers of other houses—4. Officers of ditto—5. Strangers.—These five last cases may be considered as belonging to the *Misbehaviour-book*.‡ III. *Heads* for a complaint-book—1. Time (day, hour, and minute)—2. By whom—3. Against whom, or what—4. Concerning what—5. To whom—6. By whom examined into—7. Witness or witnesses examined—8. By whom decided upon—9. Time when decided upon—10. Time employed in

* In the form called the Italian, book-keeping is a science of itself, and a most intensely difficult one. Happily it is not here a necessary one. It is not practised in any of the existing poor-houses; nor (what is much more material) on any of the occasions in which national accounts are delivered in to Parliament.—Thus much seemed necessary to be intimated, lest a large number of professed book-keepers thoroughly initiated in the intricacies of the Italian mode, should be regarded as a necessary part of the official establishment of each industry-house, and an acquaintance with their language a necessary condition to the faculty of understanding the accounts:—on the former supposition, the expense would be great indeed; and on the latter, the security for good management, as well as the satisfaction to the public not a little weakened. If two copies of one and the same original (the waste book) may be of use in the character of *checks*, of how much greater use will not two original accounts be, kept by two uncommunicating hands? For instance, in the case of articles transferred from house to house, the *transfer-inwards book* of the one house, and the *transfer outwards book* of the other.—In the public accounts, the *method* is the method called for by the subject-matter and the occasion, and the *language* is the language in use with everybody. Would public accounts be rendered the clearer, by translating them into a language composed entirely of fictions, and understood by nobody but the higher class of merchants and their clerks?

The real use of the peculiarities which characterize the Italian mode, might be a subject well worthy of investigation. I mean in the situations in which it is at present employed; for *here* every purpose of the Italian mode might be answered, and answered in perfection—(I give it as the result of a particular and very laborious inquiry) by a set of heads, taken exclusively from the ordinary language.

† To save the delay and danger of error that might result from determining in the first instance to what *methodical* head they belong to—and to preserve a constant assurance that nothing is omitted.

‡ If there be an *officers' misbehaviour-book*, it should be separate from the *common misbehaviour-book*, and kept by a separate hand. The name of the offender *need* not be entered—nor in the case of a first offence ought to be: the entry itself would be a punishment, and that a severe one. When a baker is fined for short weight, publication is held up to him *in terrorem*, as an ultimate punishment for delinquency otherwise incorrigible.

Digitized by Google

the examination—11. Decision—12. Decision, by whom executed—(if it be a case calling for execution)—13. Time, &c., when executed.

Provision against suppression of complaints, where a pauper is complainant.—Time for complaining, a time when the whole official establishment is assembled—right of having the complaint entered in the book.—Complaints by paupers against paupers, will of course have officers for judges.—An appeal will in that case be a complaint against the officer who acted as judge. At every visitation (see Ch. v. *Official Establishment*) the governor bound to present to the visiters the books, exhibiting the complaints made by paupers, whether against officers, or against the management, for a certain time back. Complaints against the management not to be repeated by paupers after having been decided upon by the General Board. Punishment for complaints adjudged *rash* as well as *groundless*—still more if *malicious*, and made for the purpose of *vexation*.

Unexampled perfection, of which the system of procedure is susceptible in such a situation—the result, partly of the discipline, but principally of the architecture. Delinquency known the instant of its being committed: defendant, complainant, witnesses—(if distinct from the complainant)—judges—everybody—on the spot:—delinquency, complaint, trial, sentence, execution—might all be included—and without injustice—in the compass of the same minute.* Punishment may *here* be the less *severe*, in proportion as the *certainty* of it is the more entire: but in proportion as *punishment* is *certain*, *delinquency* will be *rare*. In case of complaints of a serious kind, (such as those which constitute a *legal* charge, civil or criminal,) the Industry-house itself will be a perfect, and the only proper, *safe-custody* house: by a common jail, such as common jails are at present, a scratch in the moral character would be inflamed into a death-wound.—(See Book iii. Ch. viii. *Imprisonment, &c.*)

In case of a complaint by a pauper against a stranger, if the stranger will not make up the matter, or it be a matter not fit to be made up, the consequence of a decision given against the stranger, will be a report from the house to the general Direction-Board—of which report, if confirmed, the consequence will be an order to prosecute.—Unexampled degree of protection thus secured to the pauper-population:—thence a degree of security, from which, by the intricacies and expenses, partly natural, partly factitious, of legal procedure, the self-maintaining poor—that is the great bulk of the community—are debarred. (See *Defence of Usury, and Protest against Law Taxes.*)

The *black-book* will be of use chiefly by its name; the matter of it will have already found a place in the *misbehaviour-book:* cases either of *high* delinquency, or of conspicuous *pertinacity*, (both classes rather ideal than probable in such a situation) will be the only ones proper to be put upon it.

Red-book.—The instances of the application of the *peculiar premium* principle, will constitute the *ordinary* matter of the *red-book: uncalled-for*, and *unexpected* manifestations of merit, the extraordinary. The chaplain, the "*recording angel:*"—one amongst other means of encompassing with sentiments of love and veneration the idea of this officer, the special guardian of religion and good morals.

Chap. XI. Appropriate Establishments—viz. for the *Insane*, &c.—In the instance of some of the classes, appropriate houses may be of use: the appropriation being *special*, but not *exclusive;* that is, the complement of the establishment being made up out of the other classes, rather than *room* or officers' time should be unemployed:—the central-inspection-architecture obviating whatever inconvenience might result from the *aggregation*, if, instead of being but *apparent*, it were *real*.——Classes requiring appropriate establishments.—I. *The Insane.* II. *The Deaf and Dumb.* III. *The Blind*—in some cases.

Reasons for collecting together, into appropriate establishments, persons afflicted with the above infirmities—I. Reasons applying to the *curable* classes of the *insane*. 1. Benefit of appropriate medical curation and atten-

* The mode of procedure *observed* by a wise and good man in private life, in the character of a father or the master of a family, within the sphere of his authority—the procedure of the domestic tribunal—is a standard by which the fitness of a system of judicial procedure—the procedure of public tribunals—may be tried:—the mode of procedure *observable* in such a tribunal as that of the proposed industry-house, is a standard of still greater simplicity and perfection: the real difficulties, that *in some cases* obstruct the procurement of evidence, constitute but one cause indeed, but that the principal one, of the necessity which really exists *in some cases* of deviating from these standards.—Compare with either of them the refusal to examine parties in the *common law* courts—civil as well as criminal—and the practice of examining parties—but in writing only, and after a six weeks', month's, and fortnight's time for fabrication—in what are called the *equity courts*.—Delay is spoken of, by Montesquieu, as if it were of the essence of *justice;* and as if the greater the delay, the better the justice. But delay without special cause—all delay that takes place of course, and previous to the knowledge of the case—is—so long as it lasts—*injustice*. Lawyers, under the notion of coming at the truth, the whole truth, and nothing but the truth—lawyers of all nations—have, in the instance of certain classes of witnesses, (differing in their list of these classes without end,) refused to judge whether the narrative be, or be not, a true one:—assuming, that there are but two degrees of probity, in this respect, among mankind—that of the *ever-lying*, and that of the *never-lying*—and not considering, or not sufficiently considering, that a refusal to hear any sort of witness—how depraved soever—is a license to commit, in the presence of that sort of witness, all imaginable crimes. Apply these rules of inaudibility to a population composed exclusively of convicted felons.

Digitized by Google

dance. 2. Giving to the patients the whole time, and entire attention, of the medical curator, undivided by miscellaneous practice. 3. Enlarging the field of his observation and experience. 4. Benefit of suitable instruction and superintendence, in respect of *employment*. 5. Ridding the ordinary houses of an annoyance.

II. Reasons applying to the case of the *deaf and dumb;* also to the *blind*, especially to children *born* blind, or become so at an early age. 1. Benefits of appropriate *education*. 2. As well as attendance—instruction—and superintendence—in respect of employment.—The deaf and dumb are of sound mind, or upon the footing of idiots, according to the care bestowed upon them at an early age.

III. Reasons applying to the case of the *incurably insane*—appropriate attendance, and (where susceptible of employment) instruction and superintendence. The insane of different descriptions—such as curable and incurable, susceptible and unsusceptible of employment, dangerous and innoxious, &c.—are not to be considered as necessarily allotted to the same establishment, one class as another, by reason of their common attribute of *insanity;* but may be aggregated to other establishments, and with other infirm classes, according to the nature of their respective cases. (See Ch. iii. *Separation and Aggregation.*)

Chap. XII. Pauper Education.—An inquiry concerning the best method of providing for the non-adult classes of the pauper population coming under the management of the proposed Company—that is, for each individual, during the period of his non-age—requires for its answer a complete plan of education, adapted to this numerous division of the community. The importance of the inquiry is in the joint proportion of the advantage to the *multitude* of the individuals concerned, and of the *degree of influence* which—in the situation in question—a plan for this purpose may be expected to manifest. The *multitude* included under the denomination of *the poor*, compose the bulk of the community:—nineteen twentieths might perhaps be found to belong to that class:—in the condition of one of these twentieths, the plan in question would exercise a direct and all-commanding authority; and over the remainder a very considerable,—and finally, perhaps, an all-prevailing—though less certain, and immediate, influence. If, in point of real importance, the education of the rich can bear any comparison with that of the poor, it can only be in respect of the influence which the conduct of the former class has over the latter. In the situation proposed, the conduct of the poor will depend—not upon the remote and casual influence of the rich, in the way of example or casual communication, but upon the direct and constant exercise of plastic power. The influence of the schoolmaster on the conduct of the pupil in ordinary life, is as nothing, compared with the influence exercised by the Company over these its wards. Yet these are the classes whose case is so generally overlooked by the writers on education: partly (it should seem) as not being worthy of their notice; partly as not lying within their reach.

Education is the conduct of the individual through the early part of life.

The proper end of education is no other than the proper end of life—*wellbeing.*

The wellbeing here in question is, partly that of the individual to be educated, partly that of the parties at whose expense, and by whose care, he is to be educated—viz. the proposed Company:—in respect of the wellbeing of the child, they are as *guardians;* in respect of their own, they are as *masters.*

From the commencement to the conclusion of the period of education, (comprising in this country the first twenty-one years of life,) the field of education comprises the whole of the individual's *time.*

The time of an individual is employed, partly in *active* occupations, partly in *repose* which is the absence of them all.—List of the *ends* or *objects* to one or more of which all occupations ought *here* to be directed.—I. For the advantage of the Company, as well as his own. 1. Profit of the pecuniary kind, the fruit of productive industry.—II. For his own advantage, in respect of his present condition in the apprentice-state. 2. Comfort (including amusement.) 3. Continuation of existence (viz. by nourishment.) 4. Health. 5. Strength. 6. Cleanliness. 7. Personal security.—III. Partly for his own advantage—in respect of his future condition after emancipation—partly for the advantage of the public at large. 8. Faculty of self-maintenance. 9. Faculty of self-amusement. 10. Intellectual strength. 11. Moral health. 12. Military strength. 13. Faculty of pleasing. 14. Religious affections. 15. Suitable instruction—instruction in all suitable points of art and knowledge.

Among these *objects*, some lead to others; many are compassed by one and the same *occupation*:—in some instances, the connexion is necessary; in others, it is dependent on management, and presents a wide field for improvement: and here comes in the application of the *several use principle*, spoken of in Ch. iv.—Examples—*Repose* and *comfort* sweeten the time occupied in *nutrition*.*—*Cleanliness* is subservient to *health*, *comfort*, and the *faculty* of *pleasing*. *Productive industry* is naturally, though not necessarily, accompanied by (bodily) *health*, *strength*, *the faculty of self-maintenance*, and *moral health*:—by management, not only may the connexion between these objects be much strengthened, but *intellectual strength* and *comfort*, (in the shape of *amusement*,) be added to the group.—Learning, otherwise of little value,—unless by being subservient to *intellectual strength*, is, (if suitable in kind,) capable of being made subservient to the faculty of *self-maintenance*—to the faculty of *self-amusement*—

* Concerning which, see Ch. vi.—*Diet.*

Digitized by Google

to *moral health*—to the faculty of *pleasing*——and to *religious affections*.—*Military strength* (of use principally to the public) is naturally enough subservient to *comfort*, (i. e. to amusement,) and to *the faculty of pleasing*.—The *faculty of pleasing* depends upon native comeliness, (the gift of nature, not of education,) upon *health, strength, cleanliness, intellectual strength*, and *moral health*.* Of *religious affections, moral health* is in this world the great use. From suitable instruction (*suitable art and knowledge*) these sublime affections, as well as *intellectual strength*, may derive nourishment and increase.—Amongst active occupations (occupations accompanied with strong exercise) there is one, viz. *swimming*, peculiarly subservient to *personal security*—applying to a danger, against which there is no constant security by any other means:—and to this advantage is added *comfort*, (including *amusement*,) *health, strength, cleanliness*, and even *increase of strength* (by increase of security) in a *military* view.

Of *diet* and *clothing*, (two of the efficient causes of *comfort* and continuation of existence,) mention has been made in the Ch. vi. and vii.:—of *occupations*, considered as directed to *pecuniary profit*, in the Ch. iv. and viii.:—of the accession of *military strength*, that might be derived from the apprenticeship system, mention will be made in Ch. x. of the next book.—Of the remaining principles of education, relative to these and the several other objects, a compressed view may be exhibited by the following RULES and OBSERVATIONS:

1. In the whole system of occupations, and in each occupation in particular, the attainment of the several objects enumerated, in the greatest possible number, and each in the highest possible degree, (regard being had to their respective degrees of subserviency to the general end,) ought to be kept in view.

2. Of absolute *repose*, considered as the total negation of all active occupations, the quantity allowed ought to be, the least that can be made sufficient for health and strength.†

3. The efficient causes of positive *discomfort* being absent, comfort (amusement included)—comfort, even where it is but the collateral result, is the natural concomitant, of the several occupations which have for their objects or effects—*repose*, (especially after strong exercise,) *nutrition, health, strength, cleanliness, personal security*, the exercise of the *faculty of pleasing*, and the consciousness of possessing it; and, by suitable management, it may be infused into those which have for their objects *intellectual strength, moral health, military strength, religious affections*, and *suitable instruction*: and, towards the close of the period, the lists of comforts may be closed and crowned by *matrimonial society*; of which comfort is *naturally* the object, though the continuation of the species, with its attendant comforts and anxieties, is another fruit of it.

4. Strong exercises, seem in the instance of most individuals to be, in some proportion or other, necessary to the perfection of health and strength; and in particular, in non-adults, to the development of strength: and the greater the proportion of such exercises, infused into the mass of occupation, without excessive fatigue, or the support given by artificial stimulants, the better both for health and strength.

5. To answer in perfection the purposes of health and development of strength, a system of exercise taken together, should be *general* in respect of the parts concerned in it, *not local*: it should find employ for every limb and every muscle: it should not be confined to particular limbs, or particular motions of the limbs.

6. Of the occupations which, having profit for their object, come under the head of productive labour, health, and strength, (supposing a due admixture, as above of the different species of labour,‡)—health, strength, and even comfort, will be the natural, though but collateral results.

7. In the choice of occupations (due provision being made for health and strength, as above-mentioned) productive labour ought to take the lead: and that to such a degree, that no part of the time allowed by religion to be employed in productive labour, ought to be employed in any occupation directed exclusively to any other object, the portions of time allotted in each day to repose, nutrition, cleanliness, and religion, only excepted.

8. In particular, no portion of time ought to be directed exclusively to the single purpose of comfort;§ but amusement, as well as every other modification of comfort, ought to be infused, in the largest possible dose which economy admits of, into every particle of the mass of occupations by which time is filled.

9. The period preceding the birth of the faculty of productive labour, with the addition of those intervals of time from which, though not occupied by religious services, productive labour stands excluded by religious prohibitions, compose the time proper to be bestowed amongst the several other objects.

---

* In the higher lines of life, it is moreover cultivated by instruction of a particular cast, directed exclusively to this object.

† Sleep is not life, but the cessation of life: lying a-bed without sleep, is a habit productive of relaxation, and thence pernicious to bodily health: and in as far as it is idleness, pernicious to moral health.

‡ Out-door, with in-door—loco-motive, with stationary—strong, with gentle exercise.—See above Ch. iv. *Principles of Management*.

§ Make amusement, (*i. e.* comfort,) the sole end in view, regardless of those other objects, a sacrifice, not only of those other objects, but of comfort itself, will be apt to be the result. Those children are by no means the happiest, whose amusement is the most studied:—in particular, whose amusement is studied and provided for at the greatest expense. The faculty of leading to *profit*, either at once, or through the paths of dexterity and skill,

Digitized by Google

10. Instruction considered in the *lump*, the *time* of its commencement should be the *earliest* possible: and, in determining the earliest time possible, the commencement of *physical capacity*, (ascertainable by experiment as well as observation,) not *usage*—should be the guide.

11. In determining the *quantity* of instruction to be administered within a given compass of time, *practicability*—not *usage*—should be the measure.*

12. In the choice of *subject-matters* of instruction, *utility*—not *usage*—should be the guide.

13. In regard to the *order* of commencement, as between study and study, natural facility, not usage, should be the arbiter.

14. The utility in view ought to bear reference—in the first place to the situation of the individual, *during* the apprenticeship; in the next place, to his situation in the world at large, *after* the expiration of it.†

Book III. Collateral Benefits.

Introduction.—Taken in its narrowest extent, the object or scope of a system of provision in relation to the burdensome part of the poor, is—the affording mere subsistence to all persons actually in a state of indigence, and willing to accept of relief upon the terms on which it is thought fit to be offered. An establishment being instituted for the purpose, whatever *further* benefits—to the burdensome poor, to the self-maintaining poor, or to the public at large; whether in the shape of employment, pecuniary assistance, security against depredation, or other moral evils—security against death, or other physical evils—comfort—accommodation—useful instruction—or in any other shape,—may be found capable of being ingrafted on this stock, may be termed, with reference to that direct and principal object, *collateral* benefits.

Under every other system that has been either exemplified or proposed, the task, even in its narrowest extent, is too great—by much too great, for any means that can be spared. Under the proposed system—Under a Company, instituted on *mercantile* principles, with an *undivided* authority, extending over the whole field of action—furnished with a competent stock of *land* and *capital*—acting according to the system of *management*, and that management registered and made public according to the system of *Book-keeping*, above pointed out—neither the extra-business here about to be proposed, nor a superstructure even of much greater extent, would be too broad for the foundation. Of these extra benefits, or collateral results, some take place, of themselves—others by means of a particular *direction* given to labour, without any addition to the *quantity* of it.—Those which require expense, in most instances either find or provide ample funds for the defraying each of them its own expense. Some may be found to be pure sources of profit—considerable and increasable profit, over and above the expense, or even without expense:—while, of such as may be attended with expense, the neat expense, taking them all together, would be as nothing in comparison with the sum of profit deducible from the rest. Considered with regard to its pressure on the intellectual faculties, the whole burden of management may be pronounced light and inconsiderable, in comparison with that which has been sustained with so much success by the East India Company, for such a train of years, especially since the improvements made in the constitution of that imperial body, by the super-imperial power of Parliament—(See Book v. Ch. v.)—Wisdom—true wisdom consists—not in the *scantiness* of *measures*—but in the *amplitude* of *means*.

Chap. I. Employment secured.—Certainty of the Company's being able, (so long as land is not wanting,) to find employment for any multitude that can present itself.—Necessary cost of maintenance—for men, not so much as 4d. a-day: capacity of yielding return of labour, not so little as 1s.—return, treble the expense. For women, cost of maintenance not more than 3d. capacity of yielding return by labour not so little as 6d.—return, double the expense. Non-adults, on the apprenticeship footing, on terms of permanency, and thence still more advantageous.—(See Book v. Ch. ii. *Pecuniary Estimates.*)—Were the balance on the profit side less, the liberation of the individual would indeed be less speedy, but the accomplishment of the benefit, in its utmost extent, not the less certain. With land and capital sufficient, worse than common management would suffice for this: and securities for better than common management have been

---

is a property that may destroy the value of an occupation in the character of an amusement, in the eyes of a fond and prejudiced parent, but will not so much as diminish it in the estimation of the child. Forty pounds is no uncommon price for a house provided for the lodgment of a waxen child, and for the amusement of a human one:—forty pounds, by which, on the proposed plan, lodging for ever might be provided for eight children such as he: while his very amusement, *duration* as well *intensity* taken into the account, might have been much better provided for by his being led to take a part in the *making* of the house, than by all the industry that could be employed in getting him to *look* at it, when brought to him ready made.

* Not but that usage may with advantage be taken for a mark to aim at—provided it be not the most *general*, but the most *advantageous* usage:—and so long as the quantity afforded by that best usage be taken—not for the *maximum*—but for the *minimum*. That the greatest quantity administered any where, may be administered *every* where, is *certain*: that a *yet greater* than that greatest quantity may be, administered everywhere, is *probable*.

† The question whether any instruction of the literary kind ought to be administered, and the details of the system of instruction which, if any, would be the properest to be administered in such a situation, must be reserved for the body of the work.

Digitized by Google

provided.—(See Book ii. Ch. iv. and x.—and see Book v. Ch. v.)—All the hands *here* in question, are *able* by the supposition; inability being already provided for by the principal and fundamental part of the system:—physical inability may, taking the country throughout, be considered as a fixed quantity, not susceptible of fluctuations, as want of employment is.

Company's employment, however, is but a make-shift—a dernier resort.—*Free* employment is the primary and preferable object: preferable as to the employment-lacking hands, because liberty and superior pay go along with it: preferable as to individual employers, because profit on their part goes along with it: and because in their instance the supply of it operates in satisfaction of a demand, which by the supposition exists already, and wants only to be made known.

This being the case, the terms given by the Company ought not to be so high as the terms given by individuals, much less higher: because, in either case, individuals would every now and then find their supply of hands narrowed by this means. On the contrary, the affording to individuals a *positive* assistance in this respect, ought to be added to the list of the Company's obligations: for otherwise a number of profit-yielding hands, who, by means of a suitable channel of intelligence, might have been made to find their way to individual employers, might fall to the Company's share. The refuse of the population, able as well as unable, is the lot best adapted to the situation of the Company. It is *natural* that it should fall to their share, because, after experience at least, it is natural for men to prefer liberty to confinement, independence to dependence: it is *desirable*, on all accounts, that it should fall to their share, and that as little else should fall to their share as may be: it is better for a good workman to fall to the share of a private employer, as well on account of the employer, as on that of the workman: it is better for a bad hand to fall to the share of the Company—on account of private employers, that they may escape being troubled with him—on his own account even, because the Company possess such means of making him better, as the private employer does not possess; and since they do possess those means, the possession of the workman, bad as he is when he comes to them, will, so long as the Company prescribe the terms, be no disadvantage to the Company.

Demand for labour might as well not *exist*, as not be *known* to those who have the labour to bestow: in as far then as, under the existing order of things, this demand fails of being thus known, thus to *cause* it to be *known* is as much as to *create* it. The thing requisite for this purpose is a *channel of intelligence*—a regular and constant channel of intelligence—co-extensive with the demand for employment on the one hand, and that for labour on the other.—Articles requisite to constitute this channel of intelligence—I. *The Employment Gazette:* a publication rendered accessible to all by its cheapness: rendered cheap by being cleared of all matter foreign to this purpose. The Company could render it free of expense to the employment-lacking hands, by printing and circulating it at their own charge, waiting for their indemnification to a later stage of the business.—II. A system of *Employment-Register* and *Intelligence-Offices*, spread all over the country at equal and convenient distances:—a set of constant *statutes*, (as the term is in some countries for those marts for labour, which serve in that capacity for no more than one or a few days in the year.) These for particular inquiry: the gazette for offers of service, and offers of employment, in general terms.—To this purpose the system of Industry-houses is already supposed to be adapted.—See Book ii. Ch. viii.

Mode of Advertising.—A master-employer, wanting hands, to apply at any Industry-house most convenient to him, paying so much a-piece (say 1s.) for every hand he wants: this, lest he should advertise for more than he means to employ—for the purpose of having the more to choose out of, or of swelling the apparent magnitude of his business:—fruitless journies after sham offers is an inconvenience that will thus be guarded against.—Deposit (say 10s. each) to be returned for every hand, the acquisition of whom is mentioned in a subsequent *counter notice* of supply. This, as before, to prevent disappointment, by preventing the continuation of offers which would not be realized. This counter-notice should be inserted by the Company in the next Employment-Gazette.—The offers should be numbered:—to indicate the total numbers, and for the purpose of being referred to in counter-notices of supply. An employment-lacking hand to pay for insertion (say one-fourth) of the daily pay he declares himself willing to accept: 1. To prevent wanton offers, as above: and, 2. Because if it were known that employment-lacking hands might make known their offers without any check from the expense, master-employers would lie by in expectation of such offers, partly to save the fees, partly to get hands on the cheaper terms, by receiving offers, instead of making them. The *master* is the party from whom it seems best that the offer should come: since, having an employment already, and wanting hands for that employment, and that only, it is for him to specify what it is:—what an *employment-lacking* hand wants, is rather *money* than employment: many will be willing to undertake, with or without reservation, any employment by which money is to be got.—No *deposit* here; sufficient counter-notice being insured by the master's deposit, and the employment-lacking hands not being always able to afford it.—By practice (which might be anticipated in some sort by intelligence) these advertisements would, on both sides, be thrown into settled *forms*; in the

Digitized by Google

framing of which, amplitude of matter and conciseness of expression would be the main objects in view: *points of character* would come to be digested under heads:—general heads, of the moral cast, applying to hands in general: particular heads, of the professional cast, applying to this or that class of hands.—Examples of general heads—1. Age. 2. Character in respect of honesty, sobriety, good temper, assiduity, despatch, dexterity, &c. 3. Employment desired, exclusively or preferably. 4. Number of years' experience in that or similar employments (naming them.) 5. Wages demanded, &c.

To the Industry-house hands, the benefit of the Employment-Gazette might be given *gratis:* the Secretary, under the direction of the Governor, and with the privity of the rest of the official establishment, digesting and methodising their *offers*. The same matter in two different forms:—1. According to the *occupations in* which employ is wanted; 2. According to the class of *hands by* which it is wanted.—Classes to be distinguished in this point of view—1. *Free* hands at liberty immediately. 2. *Self-liberation* hands, at liberty after the debt is worked out. 3. *Bonded* hands—Hands not suffered to leave the Industry-House but upon certain conditions—for which see Ch. ii. *Mendicity extirpated*—and Ch. iii. *Habitual Depredation extirpated.*—These, with their divisions, as per TABLE OF CASES CALLING FOR RELIEF. 4. Out-poor hands—viz. self-maintaining hands—not belonging to any Industry-house.—The numbers of candidates for each employment, within a given period, *at* (or, in the case of self-maintaining hands, *resident near to*) each Industry-house, should be noted. Under both heads, notice of the amount of increase or decrease, as thus—1. Offers *remaining* on the last day of publication, so many. 2. *Fresh* offers, so many. 3. *Gone off* since the last day, so many. 4. Remaining *at present*, so many.—Returns from situations distant from the place or places of publication, would of course come in later and later, in proportion to the distance: hence another source of division and arrangement, regulated by the course of the post.—General totals and balances, every year, or oftener. The established *Corn returns* afford something like an example, though of course not near so complex and voluminous. The press to be set at one place only, viz. London, or at several parts of the country at once, according to the quantity of the matter.—For example: Home Counties, northern, and western—a place for each. Each Industry-house would be a general repository for the series of these gazettes, as well as a place of resort for the explanation of their contents. The walls of the *approach* would be a proper receptacle for these gazettes, if printed only on one side.—(See Book ii. Ch. iii. *Buildings and Land.*)—Very small fees for search and inquiry, (say 1d.) just sufficient to prevent wantonly-troublesome applications. A receipt to this amount would be sufficient for the expense; clerks being trained up out of the apprentice stock, maintained or paid according to the frugal plan of the house. To render the provision perfect, by giving to the benefit in view its utmost possible degree of extension, would require the use of the system of Industry-houses in their further proposed capacity of *frugality-inns*, and *frugality-travelling stages;* whereby an employment-lacking hand, though pennyless, would be enabled to travel from any part of the country to any other.*—(See Chap. vii.)—Hence one out of so many reasons for placing the Industry-houses at distances as equal as possible.

Less immediate effects and uses of the institution, over and above the more immediate ones of affording subsistence and occupation, on the most advantageous terms, to employment-lacking hands, and hands to master-employers—1. Promoting the augmentation of scanty wages. 2. Promoting the reduction of exorbitant wages. 3. Promoting steadiness in the rate of wages. 4. Preventing combinations among masters for sinking or keeping down wages. 5. Preventing combinations among working hands for raising or keeping up wages. 6. Keeping present to their view tables of rates of wages, that (for themselves and children) they may make a timely choice of the most profitable and least over-loaded occupations. 7. Reducing the prices of commodities, in as far as kept up by exorbitant wages.† 8. The Employment-Gazette and Register will be a useful check; and, with the help of the *visitation* plan, the *complaint-book*, and the all-comprehensiveness and perfect publicity of the rest of the book-keeping plan, an effectual check against contrivances on the part of the Company or its local agents, for keeping out of *free* employment, and thence keeping to the Company and themselves the most profitable hands. The rate of a man's pay is public; the goodness of his performances are open to inquiry: if he disputes, in any point, the character given of him by the agents of the Company, he may refer to other testimonials.‡

---

* At present, if a single man be a self-conveying animal, a poor man with a family is virtually immoveable: and if, without his family he goes in quest of employment, he is punished by the parish as for desertion, under the name of a vagrant.

† Exorbitant wages, and still more deep fluctuating wages, are the bane of happiness as well as morality, among improvident and uncultivated minds. Stagnation is ruin: a fall produces the sensation of a tax: a rise drives a man into sensual excesses:—excesses which, in one who, for want of education, has no fund of *self-amusement*, no other tastes to gratify, are fatal to health, industry, and content.

‡ Even previously to the institution of the proposed Company, no inconsiderable advance might be made towards the equalisation and *stabilitation* of wages, by *Tables of Trades*, or (to speak more

Digitized by Google

On the plan here proposed, maintenance coupled with employment—preservative and improving maintenance, not corruptive, as in the idleness of the present poor-house or pensioned cottage—is rendered absolutely secure to everybody: of the sort most eligible to present feelings, as far as the stock of that sort will go; and where that fails, it is only by giving place to another sort still more favourable to morality and lasting happiness.

Additional Matter.—Intelligence capable of being ingrafted on the Employment-Gazette; or rather on which the Employment-Gazette might be grafted, being more certain and regular in its amount—Periodical (say weekly) *pauper-population reports:* being abstracts of the population-books of the whole system of Industry-houses.—(See Book ii. Ch. x. *Book-keeping.*) The *escape list* (including *out-stays* from *furlough*) would answer a further purpose, if accompanied with statements of identification marks, (in French *signalement,*) and rewards for apprehension. The benefit would be extended by admitting of escape notices from *without doors;* in the instance of *children-wards, apprentices, army and navy deserters, prison-breakers,* and other fugitives from justice.

Promulgation.—The lists of offers of *employment* and offers of *service,* articles comprising the principal matter of the gazette, may be distributed to the parishes in the whole or in parts, according to the chance there may be, in the instance of each parish, of its affording supply to either branch of the demand. These papers may be conveyed either by the *general post,* or by and from each Industry-house within its district: they may be directed to the *parish clerk,* the only species of public officer whose abode is permanent, and his residence constant and certain; to be read by him, in the whole or in part, and then stuck up in a certain place within or without the church. The Pauper-Population Report might be read by the minister, and, by means of suitable comments and offices, be ingrafted into the Liturgy:—prayers (deprecatory) for the unprosperous, thanksgivings for the prosperous part, of the results. An office of this kind would come home to the business and bosoms of the audience: it would be congenial to that gospel, in which the concerns of the poor are the objects of such anxious and distinguished notice. The gospel itself means, in the original, *good news:* this would be truly gospel news. By the constancy and universality of the attention it would excite, it would be among the most powerful of the securities for good management, particularly in regard to the points in which humanity and morality would be more particularly concerned. *Briefs,* which solicit attention in behalf of inconsiderable fragments of the mass of the poor, or pretended poor, present a very inferior title to admittance.

Indemnity to the Revenue.—The utmost possible degree of cheapness is essential to that universality of promulgation on which the utility of this part of the plan depends. There seems no reason why a stock of intelligence, instituted expressly for the benefit of the poorest classes, should, in as far as it is *new,* be taken for a source of accession to the revenue. It is no small matter that charity, and that of so useful a sort, be administered without expense to government. That the revenue may not be deprived of any part of the supply *at present* derived from this source, the Company might compound with the Stamp-office, paying, yearly and forever, the greatest amount ever received in a year, reckoning (suppose) ten years back, for advertisements of this class: in the character of a newspaper nothing, it not being a paper of general intelligence. Escapes from without doors might be excepted from the composition: so offers of service *from,* and of employment *to,* domestic servants: male town servants at least, who may be reckoned among the *overpaid* classes. The benefit to them would still be great, by the universality of the circulation.—An indemnity to existing newspapers for the loss of this source of profit seems also to be requisite.

By no other hand than that of the proposed Company, could this invaluable national benefit be created to advantage: by government not near *so well:* by a loose multitude of scattered Industry-houses, under separate management, not *possibly.*—(See Book v. CONSTITUTION DEFENDED.)—The existing law of *settlements,* and the existing law of *apprenticeships,** both join in opposing the circulation of labour.

comprehensively) of *profit-yielding Occupations,* with their correspondent earnings:—an existing publication, professing to include this object, gives but a very small part of the number of the trades: the author of this having collected as many again, without supposing himself to have gone half way towards a perfect list.—Judging from the state and comparison of the classes of interests concerned, so much at least of the plan as concerns the reduction of exorbitant wages, bids fair for being executed; inasmuch as the parties to whose interests it is favourable, are the major part, as well in number as in opulence and power. The classes to whose interests it is advantageous are—1. The class of *consumers* (that is, everybody.)—2. The class of *master-employers.*—3. The class of *under-paid* hands.—The only class to which it is disadvantageous, is the class of *over-paid* hands: to these it cannot but be confessed to be in a certain point of view disadvantageous, since to their immediate feelings it cannot but be galling—however advantageous to their lasting interests. It is only in some such indirect and remote, in some such gentle and uncoercive way, that government can occupy itself, to any good effect, either in raising, sinking, or steadying prices: operating not by the *creation* of inducements, but by bringing into *notice* inducements which spring of themselves from other sources.

* This latter has been materially amended by 54 Geo. III. c. 96. As to settlements, see editorial Note at commencement.—*Ed.*

Digitized by Google

The former would vanish of course: the latter has ever been a nuisance, against which many have protested, and for which nobody has ever pretended to find a use.

Chap. II. MENDICITY EXTIRPATED.——Section I. *Compulsion indispensable.*—The Industry-house system (the Company being invested with the necessary powers) a certain means, and, in this country, at least, the only possible means, of extirpating mendicity. In this country, under the existing poor laws, every man has a right to be maintained, in the character of a pauper, at the public charge: under which right he is in fact, with a very few exceptions, (amounting not to one perhaps in fifty,) maintained in idleness. But in this same country the condition of the common beggar is more eligible, in his own estimation at least, than that of a pauper, maintained in idleness; for, if it were not, he would become a pauper, having it in his option so to do at any time. It would be absurd, therefore, to expect that by any management—at least, by any good management—the Industry-house provision could be rendered generally acceptable to beggars: that is, that a system which affords bare maintenance—maintenance in the most frugal and least luxurious shape—nor that otherwise than on the condition of working, as far as ability extends, to the full amount of it, should be preferred to a mode of life exempt from working—to the condition of him who is not at present the lowest of those who are maintained in idleness. If, in any country out of England, plans for the extirpation of mendicity without compulsion, (*i.e.* without bodily compulsion,) have met with a temporary success, no inference can be drawn from the success of such a plan in those countries, to the success of a similar plan in England; since, in those countries, beggars being liable to starve, and many, doubtless, being starved, the question will have been, whether to accept of the proffered provision, or starve:—whereas *here* the question would be, whether to accept of it, or to be maintained in idleness. If, notwithstanding the adoption of the proposed system in other respects, begging were to be tolerated, the nuisance would be much greater than at present: since, of those who are now maintained in idleness in the character of paupers, multitudes, rather than be set to work, would become beggars.

Section II. *Compulsion justifiable.*—Mischiefs produced by the practice of begging—1. In the instance of passengers in general, considered as exposed to the importunity of beggars—to some, the pain of sympathy:—no pain, no almsgiving;—begging is a species of extortion to which the tender-hearted, and they only, are exposed. 2. Disgust; which may exist where there is no sympathy:—the sympathy experiences a sort of relief by giving; the disgust finds no relief.—From the disgust excited by the presence of a filthy beggar, none but the equally filthy stand exempted. The multitude of the persons subject to this pain of sympathy, or to this disgust, considered, there can be little doubt but that the sum of these pains taken together is greater than the difference to the beggar in point of comfort between begging and working. 3. Discouragement to industry. Every penny spent is the reward of industry: every penny given, a bounty upon idleness.—The luxuries seen in many instances to be enjoyed by beggars, are a sort of insult to the hard-working child of industry: by holding him out as a dupe, who toils and torments himself to earn a maintenance inferior to what is to be earned by canting and grimace. 4. Facility afforded to real crimes.—Mendicity, by the removal of shame, removes one of the chief safe-guards to honesty: and to tolerate beggars, would be to tolerate habitual depredators; for those who are now *unavowed employment* hands, would *then*, if under *that* name subjected to compulsive industry, declare themselves beggars. 5. Unfavourable influence on happiness, even in the instance of the begging tribe itself, taking the whole together.—There are many, it is true, who, for a time, at least, would, unquestionably, be no inconsiderable sufferers by the proposed change. But the greater part would be gainers in point of happiness, at least in the long run: since—(it being a property of this as of other unlaborious professions to be overstocked)—for one prosperous and happy beggar, there are probably many unprosperous and miserable ones; wretches who, notwithstanding, keep lingering in their wretchedness; sometimes for want of power, sometimes for want of resolution, to emerge from it. The discomfort would cease at any rate with the existing stock of prosperous beggars: the benefits would be everlasting: and the disturbance of the prosperity of the prosperous ones appears to be a sacrifice necessary to the attainment of the benefit.

Section III. *Plan for the Apprehension of Beggars.*—Power to any one to apprehend a beggar, begging in any public place, and conduct him either to a constable or to the next Industry-house.*—Obligation on constables and magistrates, with power of commanding assistance.—Reward 10s. or 20s. advanced by the Governor, and charged to the beggar's account. The whole to the constable, if he apprehends on view: if on simple information, the informer to have a quarter: if on information, accompanied with apprehension, half.—Necessity in this case of admitting the informer as good evidence. Power of commitment to the governor, or else to the chaplain; the latter being without pecuniary interest in the management.—Intervention of a magistrate (unless the chaplain should be nominated to the magistracy) would produce complication and delay, and might render the execution of the law

* This power exists already in the case of felons, and seems in little danger of being abused; since, in exhibiting the beggar, a man exhibits himself at the same time.

Digitized by Google

less steady.* Time of detention, till the beggar's self-liberation account is balanced.—(See further on.)—*Items* for which the beggar is to be debited.—1. Reward for apprehension, as above. 2. Expense of conveyance.† 3. Diet, while in the house. 4. Use of clothing and bedding, while in ditto. 5. Medicine, or any other articles of separate expense. 6. Individual's share of the joint expense of the house for the time. 7. Ordinary profit upon so much of the Company's capital as is employed in the defraying of that expense. 8. Expense of life-assurance in this instance: *i. e.* equivalent for the chance of his dying before his account is balanced.

Section IV. *Provision after Discharge.*—Beggar's *offer of service*, for any employment of his choice, to be previously inserted in the Employment Gazette. No discharge, however, without a responsible bondsman, (a housekeeper paying taxes,) undertaking for the giving him a specific employment, not to be withdrawn till after (suppose a week's) notice to the house: giving notice also to the house of the beggar's departure, on whatever day it happens, or the next. The beggar to enter into a corresponding engagement on his part—not to depart from such service without (suppose a week's) notice to the employer; and, upon departure, to return that same day to the Industry-house, unless provided with another employer, on the same terms;—and so *toties quoties*. This *probation period* to continue (say) a year: and at the end of it, the beggar to be entitled to his certificate of *full emancipation*.—Failure of such notice or return, to be considered as an *escape*, and advertised as such in the *Employment Gazette*, with a reward quadruple to the original one. In case of a relapse into the begging trade, the original reward doubled; in case of a second relapse, quadrupled: and so on, doubling it each time.—The self-liberation account not to be balanced by money, but by labour (otherwise rich beggars might, in despite of the provision, continue their trade) or, if balanced by money, only in part. By coming in as a volunteer, a beggar will save himself from the expense of being pressed, and from the clog of the *probation period*. The provision will tend so far to execute itself.

Section V. *Evasions obviated.*—Classes that must be considered as beggars, or the provisions would be nugatory. 1. Offerers of pretended services to passengers.—Examples: Street and road sweepers—Layers of boards over kennels—Link-bearers—the two last are apt to be in confederacy with pick-pockets. 2. Pretended hawkers.—Hawking to be deemed a *pretence*, if the quantity remaining exposed to sale be too small to afford a profit equal to a day's subsistence. *Licences* might serve to distinguish the real from the pretended. Acceptance of alms, in a road, street, or other public place, with or without previous petition, sufficient *evidence* of begging:—dumb show may be as expressive as words.

Section VI. *Almsgivers unpunishable.*—1. Penalties on *givers* of alms would be *needless;* since if nobody durst take, nobody could give. 2. *Unpopular:* being penalties on the exercise of what, in respect of the disposition and motive, or apparent motive, at least, could not be denied to be a virtue. 3. *Obstructive* of the *end* in view: since, in the case of begging by dumb show, it would take off the only *evidence*.—Punishment is out of the question on both sides: even in the case of the beggar, what is proposed to be done is no more a punishment, than sending a boy to school is a punishment. No pain inflicted on purpose, for the purpose of operating on others by the prospect of it: and the duration of the discipline is made to depend upon the exertions of the party subject to it:—in the instance of the *lazy* hand, as in the instance of any industrious *self-liberation* hand.

Section VII. *Existing Remedies incompetent.*—Remedy 1st, Punishment under the Vagrant Act, &c. (17 Geo. II. Ch. v.) The effect of this provision is rather to *obstruct* the design than promote it.—Whipping does not give employment. Imprisonment in a common jail, so far from giving employment, excludes a man from it: besides corrupting him, by aggregating him with bad characters of all sorts, out of the reach of all tutelary aggregation and inspection.—The prisons called *houses of correction* are not universal; and where they exist they afford little or nothing of *correction* but the name. They either afford him no employment at all, or an employment which will be no resource after discharge: an employment not to be had elsewhere, because not affording a maintenance to the workman, together with an adequate profit to a master-employer.† 2. The

* In the Shrewsbury house of industry, a similar power is vested in the Board of Directors.

† As in case of a beggar unable, or pretending to be unable, to walk; or in case of his being refractory, and extra assistance hired. This will render it the beggar's interest not to give unnecessary trouble.

‡ List of *requisites*, the *concurrence* of which is necessary to the carrying on a branch of manufacturing industry without loss. 1. Building suitable—in point of space—materials—dimensions—and divisions.—2. Land sufficient.—3. Appropriate stock of all kinds, in hand or at command, in sufficient quantity and value.—4. Scale of the establishment, in point of number of hands, &c., large enough to afford adequate recompense for a suitably-qualified manager's time.—5. Mode or terms of management, mercantile—the manager having a sufficient pecuniary interest in the success.—6. Stock of hands so circumstanced, as to be depended upon for a continuance.—7. Appropriate instruction administered.—8. The managing hands, by education and habits, qualified for the charge.—9. A system of book-keeping appropriate, adequate, and regular.

The existence of these united requisites, in here and there an instance, would avail nothing, unless it were universal; since the preparing for the beggar, in one district, a place of reception which was not to his taste, would but drive him into another.

Digitized by Google

law is *inexecutable*.—The mere want of jail-room would itself be a physical bar to the execution of it. The spare room in all the existing jails and houses of correction put together would scarcely *lodge*, much less *set to work*, the *beggars* alone, without reckoning the *unavowed-employment hands*, and other classes aimed at by the act. Were it even capable of being executed, the necessary parties would not generally concur with the degree of willingness requisite for the execution of it:—*magistrates* not, were it only in consideration of the useless expense to the public: *constables* not, through compassion, and fear of odium: private *informers* not, the reward being so small, and, on account of the known disinclination of the other parties, the trouble of the business being so much more certain than the success. Hence it is, that (excepting the punishment of here and there an individual who happens to be particularly obnoxious) things go on as if there were no such law: and the limits that are set to the number of this tribe, are set—not by the operation of the laws, but by the quantum of encouragement afforded, within a given space, to this mode of life.—If the law had any effect, otherwise than in the way of casual and useless punishment, it could only be that of driving a man out of the street into the poor-house: that is, quartering him upon the *unwilling*, instead of the *willing*.

Remedy 2d.—*Private Bondage*;—by an old statute still existing, but scarcely known.—(5 Eliz. Ch. iv.)—In the case of *males*, under a *self-appointed* master, from any age not under twelve, up to sixty.—This remedy, such as it is, includes beggars no otherwise than as it includes everybody, certain denominations only excepted. 2. *Females* do not lie quite so completely at the mercy of a self-appointed master: servitude expires when beauty begins to fade:—at forty years of age:—and the magistrate has a control upon the choice.* The very existence of a law like this, is sufficient proof of the inefficiency of it; since the execution of it would never be endured. 3. With all its harshness towards the intended servant, it holds out no adequate advantage to the intended master:—for it affords him no adequate means of securing either the service or the person of the bondsman. While willing servants are to be had upon such easy terms, no man will encumber himself with an unwilling one, without the power either of confining him to prevent escape, or apprehending him afterwards.

Parallel between the proposed Remedy and the two existing ones.

Existing Remedy 1st.	*Proposed Remedy.*
1. Whipping.	1. No whipping, or other punishment.
2. Scene of confinement, a close prison.	2. Scene of confinement, a spacious country farm.
3. Duration not abridgable by a man's own exertions.	3. Duration abridgable by a man's own exertions.
4. No means of industry.	4. Means and habit of industry uninterrupted.
5. No means of future livelihood.	5. Future livelihood secured.

Existing Remedy 2d.	*Proposed Remedy.*
1. Term of servitude, any number of *years* up to forty-eight, according to a man's age.	1. Term, a very few *weeks* or *days*: more or fewer, according to a man's own exertions.
2. Master, self-appointed—anybody, be his character ever so bad, and temper ever so intolerable.	2. Master, a man of character and education, appointed by a great public company.
3. Scene, a private house—unconspicuous—uninspectable.	3. Scene, a public establishment, of the most conspicuous kind.—Management transparent,—inspection uninterrupted and universal.

Chap. III. Habitual Depredation extirpated.—Section I. Measures the same in kind as those which serve for the extirpation of *mendicity*, will serve and suffice, nor will any others suffice, for the extirpation of *habitual depredation*. But here the *reward* may be greater, because the *service* is greater; the mischief to which it applies the remedy being greater, as also the danger that may attend the rendering the service. The reward being greater, the *self-liberation period* will be proportionally longer, of course; and the *probation-period* may be rendered so. The necessity of compulsion is still greater here, because the repugnancy is still greater:—beggars are so, because they are above being paupers; habitual depredators are so, because they are above being beggars. It would be a sad inconsistency to extirpate the undangerous habit, and leave the dangerous habit untouched. The habit of depredation may be inferred with the most perfect certainty, and without the possibility of injury, from the want of honest means of livelihood, (sufficient property as well as honest occupation included) coupled with the non-exercise of mendicity: for existence has no other means of support. What is *not* known, is, whether a man is a smuggler—a sharper—a coiner—a thief—a highwayman—or an incendiary:—what *is* known, is, that he is one or other of these, or several in one. This, though an in-

* *Appius*, therefore, under this law could not have possessed himself of *Virginia*, without taking the part that he took at Rome.

Digitized by Google

direct, is an irrefragable proof—not only of an *act* of depredation, but of a multitude of such acts: a multitude sufficient to constitute a *habit*. If any one of them were specifically proved in a legal way—in the course of a criminal prosecution—a man would be dealt with as a criminal: this proof being wanting, he can no otherwise be dealt with than as one to whom honest employment is necessary, and who is not provided with it. The inference with respect to the existence of the habit of depredation—the ground of proceeding—is therefore still stronger, in the case of the *unavowed-employment* hand, than in the case of the *suspected* hand, or even the *stigmatized* hand. In the first case, there is *certainty:* in the other, it is but *suspicion* and *apprehension:*—unless the *suspected* or *stigmatized* hand happens also to be an *unavowed-employment* hand; a coincidence not unfrequent, but nothing like universal. The *suspected* hand, having been adjudged unpunishable, must not be punished: the *stigmatized* hand, having been punished sufficiently, must not be punished more. But this, it has been already shown, is not *punishment*.—The remedy is in little danger of being employed where it is not wanted: for if a *suspected* hand, *i. e.* a person discharged for want of legal proof, be really innocent, and looked upon as innocent, and of good character, bondsmen will not be wanting: even supposing him guilty, and believed to be so, if he be but a *casual* depredator, not an *habitual* one; for a bondsman may then get him on reduced terms, and the reduction may be his indemnity for the risk.

Section II. *Proof of Habitual Depredation.*—Living without any assignable and honest source of income (an act of which habitual depredation is the necessary consequence) being a *negative* act, or rather *habit*, proof of it cannot be obtained but from the party himself: *positive* acts offering themselves to sense, proof of them may be obtained from those to whose senses they have presented themselves: negative ones, not offering themselves to sense, can no otherwise be proved than in the way of inference; viz. from the want of proof of the opposite and corresponding positive matters of fact on the part of him, whose interest it is, or is made, to furnish such proof; and who is so circumstanced, that supposing them to have had existence, he could not but have it in his power to demonstrate it. To put the party to the proof, is in such a case, to *interrogate* him. Interrogation of the party is therefore an indispensable ingredient in the proof of want of honest livelihood. Employment supposes an employer. Honest employment does not shun the light, but court it; employment that does not shun the light, supposes witnesses to every circumstance belonging to it—the *place* operated in—the several *subject-matters* of the operation—the *operations* themselves:—so many partners to the operation—so many witnesses:—and to the *disposal of the result* there are at least as many witnesses as there are *parties* to it, and commonly many more. Under these circumstances, any the slightest indication of the want of honest livelihood may be looked upon as affording sufficient ground for putting the question—*Have you any honest means of livelihood, and if so, what is it?*

Indications that may be established as sufficient grounds for examining a man, for the purpose of ascertaining whether he has any sufficient means of honest livelihood; and thence, whether it shall be lawful and proper to consign him to an Industry-house, in the character of an *unavowed-employment* hand.—1. Conviction of an act of depredation—followed by punishment for a term, and the punishment undergone: (the case of *stigmatized* hands.)—2. Prosecution for ditto grounded on oath, though for want of legal proof not followed either by punishment or conviction; or, by stretch of prerogative, the party withdrawn from punishment:—the case of the *suspected* hand.—3. Accusation of an act of depredation, by a charge, which, though specific, has been deemed insufficient in the character of a ground of commitment for trial.—4. Oath by a person of character, declarative of a suspicion that the party has no honest and adequate means of livelihood.—5. Even strangership to the place, if coupled with more than traveller's stay, and with apparent indigence.

Examples of Heads of Interrogation.—1. What *are* your means of livelihood?—2. What *has* it been for (say one) year past?—3. In what places have you served or worked?—4. Whom have you *worked for*, or *served* under?—5. Whom have you worked *with?*—6. With whom have you *dealt* for the *materials* and *implements* of your work?—7. With whom have you dealt for the *produce*, &c.—If no answer, or no satisfactory answer, commitment to the next Industry-house, on the footing of an *unavowed-employment* hand. The answer in such a case seems not much in danger of containing falsehood, the falsehood being in its nature so open to disproof:—but in case of falsehood, the answer being on oath, will be punishable as perjury.—Power of provisional commitment to the Industry-house, on declared suspicion of perjury. Whether the rule prohibiting the extraction, or even reception, of evidence deemed *self-criminative* be reconcileable to the ends of justice—whether it be steadily observed by those who profess to regard it as sacred, are questions which have *here* no place—*here*, no crime—no punishment—no crimination—no self-crimination.

Section III. *Families of the Disreputable Classes.*—The provision would be incomplete, if the rising generation were left out of it; if it neglected the *many*, after providing for the *few*.—1. *Non-adults* being *themselves* beggars, stigmatized hands, suspected hands, or unavowed-employment hands, might be bound on the footing of apprentices: their respective *accounts* on the *self-liberation* principle, not to

Digitized by Google

open till their arrival at full age.—2. *Non-adults*, being *children* of a beggar, and living with the parent, might for this purpose be *presumed* beggars, *unless* an adequate, honest, and industrious occupation be proved.—3. So in the case of the children of unavowed-employment hands.—4. Children of a stigmatized or suspected hand, to be *presumed* unavowed-employment hands, unless as before.—5. Also children of a *confined* hand, confined in execution for a *predatory* offence.—6. Children of a *confined* hand, confined for ditto, on *mesne process*, to be consigned or not to the Industry-house, till the trial of the parent, on recommendation of the committing magistrate, at the discretion of the chaplain of the House.—7. Failing the father, the mother or other *next friend*, being master or mistress of the abode in which the child resides, to be regarded on the footing of the father, for this purpose.—8. Children (unless for special reason assigned by the children) to be consigned to the same house with the father, for his comfort and satisfaction, exposed habitually to his *view*; but, to preserve them against corruption, not exposed to his conversation, unless in the presence of an *officer*, or two or three *guardian elders*.—9. Provision of detail against collusive apprenticeships, and other contracts entered into for the purpose of frustrating the above provisions.—The general presumption—that the parent is the child's best guardian—fails here. The parental influence would be employed—not in the *support* of morality, but in the *destruction* of it. In the case of the *notoriously immoral*, the parental power may require to be suspended till recovery, as in the case of the *insane*; and for that purpose transferred, although involuntarily, in the present case, as it is voluntarily in the case of ordinary apprenticeship.

The *wife* of a beggar, unavowed-employment hand, stigmatized hand, or suspected hand, consigned to an Industry-house, might be consigned (if living with the husband) to an Industry-house likewise, unless by consent of all three parties, the husband, the wife, and the Direction Board, (on report from the chaplain,) it should be ordered otherwise:—and to the *same* house, unless on petition, by either husband or wife, it be determined otherwise:—and (unless on like determination, grounded on like petition) the *self-liberation* accounts of husband and wife should then be consolidated into one—that when the parties go out, they may go out together. Cohabitation should be received as presumptive proof of marriage, for the purpose of justifying on the part of the Company the exercise of power to this effect; unless and until this presumptive marriage be disproved, by a valid one with a husband or wife living at the time of the proof.

Section IV. *Efficiency of this Plan.* By this plan might be accomplished—and that in a degree little short of perfection—upon an all-comprehensive scale—and not only without expense, but with profit—what at a vast expense, and with inadequate powers, a most respectable Society have so long been striving at, upon a comparatively minute scale. In 1795, numbers provided for, 131: rate of expense per head, £28, 10s. a-year, over and above earnings. Total cost of the pauper population, were the whole of it provided for at that rate, £14,250,000 a year.—Extirpating *habitual* depredation, will not extirpate depredation altogether, but it will go a great way towards it:—*casual* is probably the smaller branch.

Section V. *Ulterior Securities.*—To give the plan, even as against habitual depredation, its utmost degree of efficiency, might require some such institution as that of an *universal register* of names, abodes, and occupations; with power to magistrates, in certain cases, to examine parties as to the truth of their returns:—in a word, Mr Morton Pitt's *Census* rendered all-comprehensive and obligatory.—Fragments of such a work are growing up as it were of themselves.* This and more is done by government every half year, in the case of the affluent and undangerous classes, for the purpose of taxation: those in whose instance it would be *doubly* useful, are alone exempted from it. Were the examination even oral and public, (which, however, it need not be,) as well as universal, the highest dignity would be rather illustrated than hurt by it.† Leaving the extirpation of casual depredation to some maturer age, which, with intelligence enough to recognise the defects in the law, may possess energy enough to correct them, were the proposed Industry-house system now established, and the care of the police reposed, with adequate powers, in hands such as those which, with such well-directed zeal, and such unexampled celebrity, we have seen employed in depicturing the existing state of it, habitual depredation might even now be confined within a narrow range.

Section VI. *Existing Law incompetent.*—The Vagrant Act, (17 Geo. II. c. 5.) coupling the unavowed-employment class with the begging class, and with so many other classes, some differently pernicious, some unpernicious, is rendered incompetent to this purpose by the causes that have been seen, and many more beside.—It misdescribes the case—it falls short of it—it overshoots it.—It violates justice, by punishing, as for delinquency, without proof.—A clause in the Police Act, (32 Geo. III.

---

* *London Directory—Fashionable Calendar—Birmingham Directory*, &c., *Universal British Directory:* the last, a most copious and extensive work, not yet completed, the object of a patent.

† *What, sir, is your name?—George the Third, your King.—What is your occupation?—My occupation is—to govern you.*—Alfred's law of *decennary* aggregation was an infinitely stronger measure, though so much praised. To notoriety of occupation it added vicarious responsibility, and that to a degree equal to vicarious punishment—punishment without offence.—Its roughness fitted the roughness of the times.

Digitized by Google

c. 58.) grafted on the Vagrant Act, of infinitely superior texture, but tainted with the irremediable vice of the original stock, confines itself to a minute and accidental portion of the mischief, and punishes as for *repeated* depredations, without proof of *one*.

Chap. IV. Temporary Indigence relieved.—The best mode of relieving temporary indigence, on the part of the self-maintaining poor, is—not by *donations*, but by *loans*.—Loans preserve unimpaired the spirit of frugality and industry; donations impair it, by leading them to transfer their dependence from their own exertions to those of others. Gratuitous bounty, from the Company to the self-maintaining poor, would be inconsistent with the *self-liberation* principle:—the main pillar of industry and economy. When those who have nothing are not relieved *gratis*, nor on any other terms than that of full payment in the way of work, it would be an inconsistency to afford relief *gratis* to those who have wherewithal to pay for it. Gratuitous bounty is among the shapes which private charity may with propriety assume:—where the expense arises out of a man's own pocket solely, he will naturally be the more attentive to the justice of the claim; when it comes wholly or principally out of the pockets of others, (as it would do if bestowed on the Company's account by the agents of the Company,) profusion has neither sufficient check nor certain bounds.—(See Pauper Systems compared.—*Home-provision*.)—By *loans* made at a reduced rate compared with the established terms, the Company might afford an immense mass of substantial and unexceptionable relief, without injury either to their own purse, or to the morals of those whose momentary feelings they relieve. In the instances in which dissipation is promoted by money advanced in the way of *loan*, it would be favoured still more by money *given* without condition of repayment.

The Governor, with the privity of the Chaplain, might be empowered and directed to advance money, either to all persons indiscriminately, or to any particular class or classes meant to be favoured on the ground of the lowness of their wages: the rate of interest, little or not at all greater than what will be sufficient to cover common interest, with the addition of the expense of management, which (with the assistance afforded by the official establishment and the population of the Industry-house) might be very small:—suppose six per cent. per annum in the whole.—To prevent wanton applications, a fee must be taken on admission into the office for the purpose of borrowing, and again on redeeming, say a halfpenny or a farthing each time, the expense of booking and ticketing included. No loans being gratuitous, the fraction due on the score of interest in each account would require in every case to be raised till it amounts to the lowest denomination of coin.* In the case of immoveable property, possession not being sufficient evidence of title, mortgage-conveyance, preceded by scrutiny into the goodness of the title, would necessitate an additional expense. Were a *law clerk* to form a part of the establishment, upon a fixed salary, this might form part of his business; the learning as well as labour of which might be reduced within a narrow compass by *fixed forms*: in which case, for the additional one per cent. the mortgager might be exempted from the expenses of conveyance; which bearing the larger *ratio* to the property the smaller it is, in small properties such as cottages, would eat up a great part of the value of what there is to pledge:—and, the goodness of the title being once ascertained, the money might be advanced to him in small successive sums, as he wanted it, and after repayment readvanced, all without addition to the expense, which on the present plan cannot be done.—This branch of relief would, if exonerated from stamp-duties, require to be confined, in its application to *property*, to value not exceeding a certain sum; and, in its application to *persons*, it might be confined to labourers in husbandry, as, being the class lowest paid, most apt to possess immoveable property in small parcels, and in point of affection most attached to it.

Reasons for supposing that six per cent. with the above fees, would defray the expense.—At *Paris*, under a government establishment, five and a half, and in some cases five, (before the Revolution,) used to defray it: six per cent. defrays it, and with a considerable profit, at *Hamburgh*; where, before this public institution, private pawnbrokers used to exact from sixty to eighty per cent. At Rome and in other parts of Italy, this branch of charity is or used to be administered upon as cheap or cheaper terms.—In a proposed Industry-house, part of the requisites are already provided for other purposes:—a system of management, and a system of book-keeping—presiding local agents, the Governor and Chaplain—a system of general superintendence, the General-Direction Board. Other parts would be furnished at a rate of expense prodigiously below the ordinary *Warehouse-men* and *warehouse-women*, from amongst such of the elder members of the community as would be fit for little else:—*Book-keepers*, from the *apprentice* stock, of which a sufficient number might soon be qualified for so simple a task:—both classes maintained for less than £5 a-year a head, instead of eight or ten times the sum, as under private pawnbrokers:—in the meantime, such of the existing *transferable* stock of *adults* as could write or read, might be distributed for the

* Thus, if a farthing only were lent, and only for a day, a farthing is still the interest that would be paid for it:—of course the least sum a man would ever borrow, would be the largest sum the interest of which would be paid for by a farthing, at the rate of six per cent. per annum, for the time he borrowed it for.

Digitized by Google

purpose as far as they would go:—the distinction of the trust, seconded or not by a small addition to their allowance, would render the situation a desirable one. The only considerable expense would be a *warehouse-room*, the central part of which would serve for the *keeper's office*.

Chap. V. FRUGALITY ASSISTED.—Section I. *Exigencies*, operating as *efficient causes*, or *sources of demand*, for funds in store, in the sphere of life in question, viz. that of the self-maintaining poor; particularly the lowest-paid classes, of which the greater part of the population is composed:—with an indication, in each case, of the *form* in which the supply requires to be administered, so as to satisfy the demand.

I. *Exigencies operating as sources of demand.*	I. *Forms of supply correspondent to the demand.*
1. Failure of employment.	1. Income, temporary, during the failure.
2. Sickness—which includes failure of employment in whole or in part, and may create a demand for extra supply besides.	2. Income, temporary, during the sickness.
3. Superannuation.	3. Income, during the remainder of life.
4. Ostentatious burial—(a phantastic, yet generally prevalent demand.)*	4. Capital, for the expense of burial.
5. Child-maintenance-provision—in the event of death or superannuation of the father, before the arrival of the child at the age of complete self-maintenance: also in case of the existence of an extra number of children at once, below the self-maintaining age.	5. Income, during the inability, or inadequate ability, of each child, in respect of self-maintenance.
6. Widow-maintenance-provision—No demand (distinct from child-maintenance provision) till the superannuation of the widow.†	6. Income, during the widow's remainder of life.
7. Marriage-fund provision.‡	7. Capital for furnishing a dwelling-place, &c., and even building one, if there be none to be found.

Section II. *Sources of funds in store*, common to the self-maintaining poor—even the lowest paid classes—1. Difference between customary personal expenditure (of the man) *before* marriage, (in England, nearly equal, generally speaking, to the whole amount of earnings,) and customary personal expenditure (of a man) *after* marriage—the latter equal, at most, to no more than the portion of the earnings remaining after defraying the expenditure of the other members of the family. 2. Difference (if any) between *customary* personal expenditure (on the part of the man) after marriage, and *necessary* personal expenditure (of the man) after the marriage. 3. Difference between *customary* family expenditure (on the part of the rest of the family) after marriage, and *necessary* family expenditure (on

* These four first articles (it should be observed) are common to married and single, and to both sexes.

† These fifth and sixth articles, though peculiar to married persons in respect of the *existence* of the exigency, are almost peculiar to single persons, in respect of the faculty of laying up the *means* of supplying it, (*i. e.* the faculty of saving out of earnings a fund adequate to the purpose,) and for that reason apply almost exclusively to males. Supposing the widow to have lived, in every instance, till the youngest of the children had attained the age and faculty of self-maintenance, and by that time to have arrived at the age of superannuation, child-maintenance-provision and widow-maintenance-provision would both be consolidated, as it were, into one efficient cause of demand, taking place immediately upon the commencement of the widowhood, in the instance of this lowest class, as in that of the superior classes:—and so long as the widow and the children under the age of self-maintenance were all living, whatever provision could be made for the family would naturally require to be managed and administered by the widow, to whom, as the children attained the age and faculty of self-maintenance, the benefit of the saving resulting from this diminution of the burden would naturally accrue. Such accordingly is the form naturally given to the provision made in favour of wives and families, in the classes whose habits are superior to that of ordinary day-labour, and whose income affords a surplus capable of purchasing a provision in this way superior to the style of provision connected with those habits. But, in the day-labouring class, the surpluses being so scanty, whatever supply could be provided would require to be cut down and shaped as closely as possible to the exigency. In the instance of the widow, it would accordingly be to be shaped, not to the *whole* of her remainder of life, but only to the helpless or *superannuation* part of it: and, in the instance of the children, not to an undefined multitude of *contingent* children, and *that* during their respective periods of nonage, but to each *actual* child, and to him or her no longer than to the commencement of the age of self-maintenance, which in *this* class may take place before the period of nonage is half elapsed.

‡ This seventh article (an article peculiar to single persons) applies more particularly to males, by reason of their greater surplus of earnings: the earnings of the stronger sex being (as it should seem) not only absolutely greater, but bearing a greater *ratio* to the necessary expense of maintenance: besides that the faculty of obtaining employment appears to be more assured.

Digitized by Google

the part of the rest of the family) after the marriage.—The sum of these differences will give the *possible* amount of savings capable of being laid up in store on the man's side, during celibacy, applicable to the defraying the first cost attending the marriage union, or to the making provision for the several other exigencies above enumerated. Speaking of what is *possible*, this proportion cannot be set down at less than three-fourths of the earnings of a male of the lowest-paid class, reckoning from his arrival at the age of highest earnings (say twenty years.)*

As to the female of this class, though her physical faculty of making earnings, is perhaps by not more than one-third or one-fourth inferior to what it is in the male; yet her opportunities of turning that faculty to advantage, are comparatively so slender and precarious, as scarcely to present a ground for calculation capable of being put upon a level with the above.

Section III. *Difficulty of Hoarding.*—Difficulties which the self-maintaining poor are apt to labour under, in respect to the *laying-up* and *improvement* of their surplus monies.—1. Want of physical means of safe-custody—such as *lock-up* places:—thence, danger of depredation and accidental loss.—Pocket, the only strong box, and that an unsafe one.—2. Difficulty of opposing a never-yielding resistance to the temptations afforded by the instruments of sensual enjoyment, where the means of purchasing them are constantly at hand.—3. Want of the means of obtaining an equivalent, especially on safe terms, for the use of such small sums, either in the shape of interest, or in the shape of a supply, adapted in its form and conditions to any of the several exigencies above-mentioned.—A Bank, instituted for the purpose of supplying this deficiency, might be distinguished by the name of a *frugality-bank.**—4. Want of a set of instructions and mementos constantly at hand, presenting to view the several *exigencies* or sources of demand for money in store, together with an indication of the most eligible means of making provision for the exigency in each case, by means of a system of banks, supposing it instituted, upon the plan exhibited below.

Section IV. *Properties to be wished for in a System of Frugality-Banks*, commensurate to the whole population of the self-maintaining poor, within a tract of country such as that here in question—viz. South Britain.

1. *Fund, solid and secure:*—proof against the several *causes of failure*, of which below.

2. *Plan of provision, all-comprehensive:*—comprehensive, as far as may be, of all sorts of exigencies, and at all times, as well as of all persons, in the character of customers: thence the amount of the deposit transferable from exigency to exigency, at the will of the customer, at any time.

3. *Scale of dealing commensurate* to the pecuniary faculties of each customer:—*i. e.* on each occasion as large or as small as his convenience can require.

4. *Terms* of dealing sufficiently *advantageous* to the customer: (the more so, of course, the better:) regard being had, in the necessary

---

* The average earnings of a male of the above description (*South Britain* taken throughout) can hardly be set down at less than 1s. a-day, (the year throughout,)—6s. by the working week, making, by the working year, £15, 12s.—In the county of *Sutherland*, in *North Britain*, £3:13:5, and no more, is the customary personal expenditure of an unmarried man, according to a statement reported by the Rev. Mr Davies, in his *Case of the Poor*, p. 200: and the sufficiency of the allowance is indubitable, since, according to the same statement, nearly as much is laid up as a fund for *house-keeping* and *marriage:* nothing is set down for *rent*, but then 5s. is set down for *merry-making*, i. e. drinking fermented liquors; and the one, it should seem, may be set against the other. A fourth of £15, 12s. is £3, 18s.,—so that what the Scotchman spends is not so much as one-fourth of what the Englishman earns. What the Scotchman *does* live upon by choice, the Englishman *could* live upon if he chose: for oatmeal and potatoes, (the Scotchman's only food in Sutherland,) do not cost less there (it is supposed) than in England: it seems probable, that, in point of *real* cost, they would even cost least in England; *i. e.* might be raised for less land and labour: though, on the other hand, the rent that must be paid for the land, is probably higher in England than in Sutherland. The excess of expense on the one score, and the deficiency on the other, may perhaps, without much error, be set the one against the other.

At *Glasgow*, indeed, the average customary *personal* expense of a married man of this class is set as high as £4:15:4,—(See Letter to the Citizens of Glasgow:—Glasgow, April 12, 1783: attributed to the Rev. Dr Porteous.)—It is natural that, in and about that great and thriving commercial town, expenses should be higher than in the thinly inhabited county of Sutherland: but I cannot help suspecting that the expenses of the man are here rated rather too high; since, in the same statement, the expenses of the woman are rated at no more than £2:16:4, not much more than half those of the man; and the expenses of an average child, being one of a family of four children, are rated at no more than £1:8:2, not more than half those of the woman, and not much more than a quarter of those of the man.—[As will readily be expected, the circumstances brought to view in this Note have been materially changed since 1797. In Glasgow, labourers' wages and expenditure differ but slightly from those of the same employments in England. By the new Statistical Account of Scotland, it appears that in Sutherland, day labourers' wages average 1s. 3d. per day.—*Ed.*

* Bankers, safe and even unpaid, are not wanting to the rich: without the aid of some special institution, such as that here proposed, such bankers will always be wanting to the poor, especially to the lowest paid, who are the most numerous classes; because a bank, capable of presenting adequate security, could not, on this petty scale, ever find its account in dealing on any such terms.

Digitized by Google

degree, to *solidity;* and if views of pecuniary advantage are admitted, allowance made for the quantum of profit necessary to be allowed to the undertakers.

5. *Places* of transacting business *suitable:* adapted in point of *vicinity*, as well as in other respects, to the conveniency of the customer.

6. *Mode* of transacting business *accommodating:* suited to the circumstances of the customer in respect of *times* of receipt and payment, and *quantum* of receipt and payment at each time.

7. *Mode* of operation *prompt:* consuming as little of the customer's time in attendance as may be.

8. *Mode* of *book-keeping, clear* and *satisfactory.*

9. *Constitution exempt*, as far as may be, from all *collateral inconveniences*, incident to *association:* a circumstance, in some shape or other, necessary to the voluntary composition of a common fund.

Section V. *Plan for a System of Frugality-Banks*, managed by the *proposed Company*—and possessed of the above properties.—Money to be received from a contributor in any quantities, paying each time a trifle (suppose the smallest coin current) for registration. The benefit granted in the first instance, a benefit adapted to all conditions and circumstances—*viz.* a *superannuation annuity:*—this benefit convertible in the whole, or in any part, into any other species of benefits, at any time, or even capable of being withdrawn in the lump, at the option of the contributor; and so *toties quoties*, on pre-established terms. A contributor to be at liberty to pay in his contribution in small sums, according to his convenience: as soon as it amounts to an even sum of a certain magnitude, (say £1,) credit to be given him for a superannuation annuity to a certain amount, to commence at such age as he chooses; the amount being consequently adapted to the age of commencement, according to a table previously constructed for that purpose: the option being given to him on each occasion, as between the increasing the quantum of the provision already made, or accelerating the commencement of it:—and so for every £1, he contributes, at the same, or any other time.

Example of divers shapes into which contributions might be convertible, at the option of the contributor, at any time, in whole or part.

1. An annuity for an existing wife, in the event of her becoming a man's widow, commencing at *her* age of superannuation, or else at *his* death.

2. In the case of a married man, having or not yet having a child or children, an annuity, during the time that each child, or each child above a certain number, shall continue *under* a certain age, considered as the commencement of complete or partial *self-maintenance.*

3. It might serve as a *pledge* on which he might borrow money of the Company, to supply a demand created by any species of exigency that may chance to present itself: whether it be *regularly accruing*, such as the above, or *purely casual;* and in either case, whether it be of the *afflictive* class, (such as failure of employment, or sickness, as above, or any other of the *causes of impoverishment* as exhibited in the *Table of Cases calling for Relief,*) or of the *lucrative* kind—exigencies constituted by the opportunity, or supposed opportunity, of deriving a positive and extraordinary advantage from the use of a sum thus required. For this he may be made to pay common interest, to cover which the greatest sum lent may be restricted to an amount not quite equal to the amount of his contribution. If, at compound interest, the amount of his debt comes at any time to equal the amount of his contribution, the annuity is thereupon forfeited, but the debt is cancelled. When the money wanted to be borrowed, exceeds the amount of the least portion of purchase-money received—(*viz.* the above-supposed £1)—he may have the option of *selling* instead of *pledging* so many of his elementary annuities as correspond to it: which would be the simpler mode, though, upon calculation, if the lapse of time since the purchase has been considerable, not quite so advantageous.

4. By selling a certain number of these elementary annuities, a man would at any time be able to raise money, to serve as a *marriage fund:*—nor ought such alienation to be accounted bad economy; since, to a bachelor, or a maiden, this nearer and more agreeable object would naturally be the foremost of the two, the other of superannuation being chosen at that early period in no other view than that of securing the money, and placing it out to advantage in the meantime.—The age at which the formation of such a fund may be expected to commence, may be, in males, from sixteen to eighteen or nineteen: when the amount of earnings has got the start of the amount of physical wants, and the youthful eye has begun to turn itself towards the opposite sex. The idea of the attracting object, especially if determinate, will be a never-failing encouragement to perseverence:—contests may come to take place amongst suitors, which shall have given the strongest proof of attachment, by laying up the largest marriage-fund in proportion to his means. The publicity inherent to all transactions in which the Company is a party, will of course (unless otherwise ordered in the present case for special reason) give a correspondent publicity to these exertions of individual virtue:—that the degree of exertion may be indicated, as well as the magnitude of the result, the total amount of the earnings may be in a line with the amount of the savings thus applied: the degree of frugality being thus measured and exhibited, a high degree may become proportionably honourable:—not to be upon the list may even become disreputable. A maiden known to have lovers, may come to take a pride in the magnitude of such their respective sacrifices; and to make a point of honour not to yield her hand till the degree of attachment

Digitized by Google

thus demonstrated has risen to a certain pitch. —Frugality, being thus brought forward by desire, as it were in a hot-bed, in the spring of life, will maintain itself without difficulty in the maturer seasons. What has been withdrawn by marriage from the provision for old age, will gradually be restored, and finally with increase. Throughout the circle of domestic expenditure, the *future* will rise in its value in its comparison with the *present*:—in England, perhaps one day as high as in Scotland it appears to stand already: and whatever is taken from the distant future to be given to immediate comfort, will be invested in articles of durable use, rather than lavished upon the short-lived instruments of momentary gratification.

Section IV. *Friendly Society Banks inadequate*:—shown by reference to the above list of properties.*

I. *Solidity*—as against the several causes of failure.—*Causes of failure* to which a frugality-bank stands exposed.—1. Terms too favourable to the customer: the result of want of calculation, ill-constructed calculation, or ill-grounded calculation: the last a cause liable to take place in as far as the accessible stock of *data*, or facts requisite to constitute a proper and sufficient ground, happen to be defective. To all these sources of profusion, the solvency of the Friendly Societies, taken in a mass, appears to stand exposed. For the principles of calculation, they have access indeed, to the works of the respectable authors who have laid the foundation of this branch of traffic: but whether, in each instance, they have taken these authors, or any other competent persons, for their guides in these dangerous and slippery paths, or whether they have taken any guide at all, any other than the over-weaning presumptions of such uninformed individuals to whose guidance the rest of the members may have happened to commit themselves, is a matter which not only had been from the beginning, but after all the attention that has been bestowed upon them by government, still continues a matter of chance. Against so much of the danger as depends upon the want of *data*, it is not in the power of skill to afford any adequate assistance. In the case of superannuation-provision and widow-provision (the two most important of the exigencies for which provision is made by any of these societies) the whole stock of *data* known to exist seems deplorably deficient, nor is the deficiency such as can be supplied without the aid of government.†

* The inadequacy of these institutions, compared as well with what *have* been, as with *might have been* their objects, reflects nothing like imputation upon the members, contrivers, promoters, or patrons, of these truly useful and meritorious associations. They worked, as they had to work, by the existing lights, with the existing materials, in the existing state of things. [By the new system applicable to saving's banks, by the 9 Geo. IV. c. 92, and the 3 and 4 Wm. IV. c. 14, a remedy is applied to several of the defects here noticed, especially in the provisions for vesting the funds in Government Stock. Like improvements have also, to a certain extent, been extended to Friendly Societies. The deficiency of uniform information mentioned in the immediately following note, is now in the course of being supplied by the Registration system established by the 6 and 7 Wm. IV. c. 86.—*Ed.*]

† The set of facts that appear requisite for this purpose are such as, taken together, shall afford a sufficient indication of the rate of vitality or mortality, in the whole, and in each distinguishable part of the territory of South Britain, as diversified by local situation, age, sex, condition in respect of marriage, and occupation. But if *place* differs materially from *place* in healthiness, it is not the rate of mortality in any one place that can afford an adequate indication of the rate of mortality for the whole territory taken together, much less for each separate part of it: if the proportions of mortality, as between *age* and *age* in different places, are materially different, it is not the proportion in any one place that can afford an adequate indication of the proportion for the whole territory together, much less for each separate part of it. If the rate of mortality, all ages taken together, is in all places taken together, or in any particular place, different as between *occupation* and *occupation*, an average rate made out from all occupations taken together will not, in any place, suit the case of him whose occupation is of the healthiest cast, nor of him whose occupation is of the unhealthiest cast. In particular, so great have been the differences observed in the rate of mortality, as between *place* and *place*, that there cannot anywhere be that place, the rate of mortality in which, how accurately soever ascertained, and for whatever length of time, can present any tolerable assurance of its affording an adequate sample of the average or mean rate for the whole territory taken together, much less a sample that shall at once be adequate for the most unhealthy and the most healthy situations—for great towns, and for country places—for marshes, and for mountains.—The rate of mortality employed by Dr Price, and adopted by Mr Morgan, is that which is exhibited by Northampton: and the rate pitched upon by these celebrated calculators, is that which bids the fairest chance for being assumed, at least presents the fairest *claim* to be assumed, by each of the several Friendly Societies, wherever situated. Yet, in Northampton, the number of the living is to the number of annual deaths, (according to Dr Price,) no more than as 26 and a fraction to 1: but, at the same time, in the average of *seven* places reported by Mr Howlett, (See Howlett on the Poor, 1788, p. 93,) two of them in Suffolk, and five in Glamorganshire, the number of the living was to the number of annual deaths, as 54 and a fraction to 1; in the parish where highest, as 59 one-third to 1:—population of the seven places taken together, about equal to that of Northampton:—the probability of life consequently more than twice as high as in the spot which seems likely to have been taken for a general standard. This is not a place to investigate the consequences of the error, supposing the Northampton standard to be an unsuitable one: but that it gives the rate of vitality—the probability of life—too low for the

Digitized by Google

2. Further cause of failure, embezzlement or dissipation: embezzlement in the hands of some unfaithful member, or dissipation by the insolvency of some third person to whom the fund has been lent, for the purpose of obtaining an interest from it.

3. Another cause of failure—dissolution of the society, in consequence of disagreements among the members.—Of the influence manifested by these two last causes among the *Friendly Societies*, examples, but too numerous, are to be found in Eden. How sure a refuge might not they have found in a bank, kept by the proposed Company!

II. *Plan of provision all-comprehensive* and *changeable at the will of the customer*. Under this head the plans of the Friendly Societies appear to be considerably diversified, but where the plan is most comprehensive, it is far from being adequately so: and as to the faculty of transmutation, it is probably without example. The exigency provided against is, in some instances *sickness* alone:—in some, possibly, *superannuation* alone:—in more, probably, *sickness and superannuation* together:—in others, *sickness and widowhood* together:—in others, perhaps, all three:—in some, (perhaps the greater number,) these useful objects are unhappily combined with an ostentatious and expensive *burial*. In no instance does the plan extend to the affording a provision for the expenses of *marriage*—against *failure of employment*, unaccompanied by sickness—or against the temporary burden resulting from an *extra number of children* under the self-maintaining age. In the two first of these instances, the smallness of the fund, in the case of these local associations, is an invincible obstacle to the making provision for the exigency; since, in this line of life more particularly, it is *convenient* to a man at least, that his contribution be received *from* him in any quantities; and in the list of exigencies there are several demands to the satisfaction of which it is *essential* that it be returned to him in any *proportion* and at any *time*, he pleases. But a fund composed altogether of the petty and unincreasable contributions of a small and determinate number of individuals, can leave no such room for individual will to operate: whether the contribution be in the form of a gross sum, or in that of a chain of payments, or in a compound of both forms, no part of it can ever be given back, but in the case of the particular exigency against which it provides: if it be a chain of payments, the chain must

---

whole kingdom taken together, may be suspected from the above instances; much more for all country places taken together in contradistinction to towns, and still more for situations above par in point of healthiness: and if there be an error, the amount of it, may, it is evident, be very considerable.—Dr Price (p. 140, 5th edition) proposes a plan for a society, in which superannuation annuities are to be combined with weekly payments during sickness. "If the probabilities of life" (he concludes) "are *lower* among the labouring poor, than among the generality of mankind, this plan will be surer of succeeding:"—meaning, by *succeeding*, not the formation of the bank, but the preservation of its solvency. This is as much as to say, that if, in any place, the probabilities of life are *higher* among the labouring poor, than among the "generality of mankind," (*i. e.* persons of all classes taken together,) at Northampton, this same plan will in such place be so much the surer of *not* succeeding. But in the seven places above-mentioned, the probabilities of life, taking the whole population together, are, as we have seen, more than twice as high as at his standard place, *Northampton*. What effect an error to this amount, viz. upwards of cent. per cent. (and which certainly is not by a great deal the greatest to be found) in the general rate of mortality, may have upon the solvency of a bank of the kind in question, is what I have not taken upon me to investigate:—not so great I suspect as upon this statement it may be apt to appear:—but what we cannot at least avoid suspecting is, that, according to the Doctor's own notions, a society for the purpose in question, instituted upon his plan, in any of the above, or any other of the situations in which the probability of life is from twice to thrice as great as in this his standard place, would be little less than sure of *not* succeeding. In these seven places, it is true, the whole population of all ranks is comprised:—but so is it at Northampton:—and *as* the labouring poor alone are to the whole population in the one case, *so* are they, probably, with little or no difference in the other: and since in all places the labouring poor constitute the great bulk of the population, the difference between the rate of mortality among the sum total of the labouring poor, and the rate among the sum total of the population, cannot, in any place, be very great.—In the case of provision for a widow, by annuity, commencing at widowhood, the commencement of the burden upon the fund being not only distant, as in case of superannuation annuities, but subject to contingency upon contingency, self-partial hope has so much the wider field to range in. Of the several widow-provision banks which had been opened before the entrance of Dr Price into this field of inquiry, such as had arrived at the trying period of their existence, had all been broken up through the experienced insufficiency of their fund, and the rest have been broken up since by the assurance of the future insufficiency of it, as demonstrated by Dr Price; though constituted by societies of a magnitude in many instances much superior to any that appears to be common or even to have an example among what are termed the *Friendly Societies*. (See the histories of these failures in Dale and Price.) The protraction of the solvency of a bank of this kind too advantageous to the customer to be secure, depends upon the influx of succeeding customers: if the influx continues copious and steady enough, the original members, by their representatives, reap the benefit of the deception: if the influx fails at a certain period, the deception recoils upon the authors. Of the societies instituted for securing a provision for old age, a great part, perhaps the greatest part, appear *now* to be exposed to the same danger:—the sufferers in those *past* instances amounted to hundreds; the predestined sufferers in these *future* instances may amount already to myriads.

Digitized by Google

continue unbroken, and the links undiminished, or all security is at an end.

But great as is the mass of population thus provided for in the whole, it is still not near so great as it might be, if the comprehensiveness of the scheme, in regard to persons, were not reduced by a variety of conditions, limitations, exceptions, and exclusions: some direct and intentional; others, indirect and unthought of. The members being to pass more or less of their time in company with each other, they must not be *unacceptable* to each other; hence acception of persons, and occasional rejection of individuals. In some places, community of *occupation* is regarded as a necessary bond of union; in that case the benefit is confined to a few of the most populous occupations. Differences resulting from sex, religion, party, and a variety of other sources, add to the causes by which not only scattered individuals, but whole majorities are excluded: for if forty are necessary to make up a society, and out of the only forty whom the vicinity would have afforded, a single one stands excluded, the exclusion envelops in effect the other thirty-nine.—Among the unperceived, or at least undesigned causes of exclusion, may be reckoned the comprehending under one association objects which in this point of view are repugnant to each other: an individual who with reference to one of these objects would be an acceptable associate, being an unacceptable one with reference to another. Thus a man, who by reason of occupation or constitution is regarded as a *bad life*, would not on that account be a member the less acceptable, but the more acceptable, to a society confining itself in its object to provision for *old age*. As it happens, the only society within his reach, is a society which to that remote object, adds the immediate one of a provision *during sickness*. But the same cause which brings death near, is apt enough to render sickness habitually frequent. Apprehension of a man's adding to the immediate burden, occasions him to be regarded as a dangerous associate, and he thence becomes excluded from taking his chance for the more distant benefit, for which he would have been an acceptable co-adventurer, had he stood alone. When provision for *widows*, to commence with the death of the husband, is confined with provision for old age, in the shape of a superannuation annuity payable to the man, the case may be much the same. To a society confined in its object to provision for old age, an unhealthy man would appear a valuable member, on account of the apparent improbability of his ever reaching that age: but the only society situate within his reach happens to unite both objects, and the apparent goodness of his wife's life, when coupled with his own unhealthiness, more than compensates the advantage promised by the apparent badness of his own life. The two benefits not being to be purchased but in conjunction, he thence becomes debarred from both, by his unacceptableness with reference to one.*

III. *Scale of dealing accommodated to the pe-*

* *Comparative view of Sickness-provision, Superannuation-provision, and Widow-provision plans, in respect of the* requisites *for their being conducted with advantage, and their fitness for being included in* one *contract.*

I. *Sickness-Provision.*	II. *Superannuation-Provision.*	III. *Widow-Provision.*
1. Requires but a *small fund*:—but that always at command.	1. Requires a *large fund*: but which, as to the capital or principal, need never be at command.	1. Requires a *large fund*: but which as to the capital or principal, need never be at command.
2. Requires *no* stock of *data*, upon a national scale, as grounds for calculation.	2. Requires a *copious* stock of *data*, upon a national scale, as grounds for calculation.	2. Requires a *copious* stock of *data*, upon a national scale, as grounds for calculation.
3. Requires a *strict scrutiny* into a man's condition in point of *health*, as a qualification for admittance.	3. Requires *no scrutiny* as to condition in point of *health*, as a qualification for admittance; the more unhealthy, the more beneficial a member, because the less likely to attain the superannuation age.	3. Requires a *strict scrutiny* into a man's condition in point of *health*, as a qualification for admittance: more so than in case of sickness-provision, on account of the superior magnitude of the stake.
4. Requires (besides a scrutiny into healthiness previously to admission) a *scrutiny* of the utmost *strictness* into the *title* to the receipt of the *benefit*, upon *each* occasion—stricter than can well be expected on the part of the managers of a fund instituted for any other purpose.	4. Requires *no other scrutiny* into the *title* to the receipt of the benefit than what concerns the *time* of the party's *birth*:—a fact of the simplest nature, and ascertainable at a period *previous* to that of the contract of admission.	4. Requires *not* a scrutiny of any nicety: after the scrutiny into health previous to admission, the only *subsequent* objects of inquiry being matters of fact of a nature little exposed to dispute—viz. the celebration of marriage between two persons, and the death of one of them.
5. Will have the *better* chance of being *well conducted*, the *smaller* the society: since, the smaller	5. Its chance of being *well conducted* has *no* connexion with the magnitude of the society: but it	5. Its chance of being *well conducted* has *no* connexion with the magnitude of the society: but it

Digitized by Google

cuniary faculties of each customer. This property is scarcely possessed, or so much as capable of being possessed by a Friendly Society bank: not only the original calculations, but the current accounts, would be too complicated for any literary talents, or at least too operose for any time, which such an association could in general be expected to afford. The contribution is paid at so much per week, or per month, the same for each contributor, though in some instances the amount of the earnings from whence it is drawn may be some number of times greater than in others. In general, compared to earnings, the amount of it appears to be very small; from 3d. to 1s. a-week, where the earnings may run from 6s. to 36s. or more: so that frugality, though invited to raise itself to this low pitch, is in a manner kept from rising higher: its claims having been acceded to up to this standard height, will be apt to be looked upon as satisfied: and thus a man who might by possibility lay up above £90 a year, and with comfort and decency £70 or £80 is supposed to have done enough when he has laid up two and fifty shillings.—On the other hand, small as the contribution is, it may yet be too much for an individual already burdened with a numerous family, and belonging to the lowest-paid class; hence another source of unobserved exclusions: though, for the same individual, *before* marriage, a contribution some number of times greater might not have been too great.

IV. *Terms of dealing sufficiently advantageous to the customer.* This property *antagonizes* with, and forms the limit of, the more important property of *solidity:* due provision being made for that superior object, then and not till then, the more advantageous the terms can be made the better. As to the Friendly Societies, it is not natural that they should be found deficient under this head:—the danger is (as we have seen) that of their promising *more* than they will be able to pay, rather than not so much. The mischief resulting from want of calculation, ill-constructed calculation, or ill-grounded calculation, vibrates between these two dangers:—in one place *too* much is allowed in return for contribution, and there bankruptcy is the consequence: in another, *not* so much as might have been allowed, and there a proportionable part of the benefit is lost.—The scale of variation being so great, stretching from below twenty to one, to above sixty to one, the co-existence of these two opposite mischiefs seems an inevitable result of the assumption of a common standard for all places, even though that standard were the exact representative of the *national* rate. In the case of a *national* Frugality-Bank, such as that proposed, if the standard be but just, both mischiefs are completely obviated.*

V. VI. VII. Place of transacting business suitable in other points, as well as that of vicinity—Mode of transacting business *prompt*, as well as *accommodating*, in regard to times and quantities of receipts and payments. Among the Friendly Societies, with few, or perhaps no exceptions, the office of this sort of the Frugality-Bank is at a *public-house:* for here it must be, or nowhere; this being the only sort of house to which it is convenient to be thus employed: at the same time, if there were any option in the case, choosing a tippling-house for a school of frugality, would be like choosing a brothel for a school of continence. The sacrifice a man is enabled to make to that virtue is small and limited: the sacrifice he is perpetually solicited to make to a habit which is the most formidable adversary of this virtue, has no bounds. The obligation (commonly annexed) of spending at this office not less than a certain quantity of money, (perhaps 3d.) for every shilling saved, as well as a certain quantity of time, (an evening in every month, or every week,) would be a very heavy tax on the contribution to frugality, if the contribution itself were not so slight in proportion to the means; and if, either already, or in consequence of a man's admission into the society, the tax were not so unhappily habitual and congenial to inclination, as to present itself as if divested of all its burdensomeness. Be this as it may, here comes in another addition to the list of unperceived exclusions; since, whatever may be the benefit, no man is admitted to the purchase of it, who will not frequent an alehouse.

As to *vicinity*, the associations in question are thus far exempt from disadvantage on that

the society, the greater the interest which prompts to scrutiny.	will be the securer against insolvency through *casual* excess of mortality, the larger the society.	will be the securer against insolvency through *casual* excess of mortality, the larger the society.
6. A bank for this purpose may be broken up *at any time*, without any breach of *engagement*, and without prejudice to the effectuation of the object, so long as it lasts.	6. A bank for this purpose can *never* be broken up, without breach of engagements, or without the utter frustration of its object.	6. A bank for this purpose can *never* be broken up, without breach of engagements, or without the utter frustration of its object.

* Superannuation age, suppose sixty-five: age of commencement of contribution, from twenty to thirty:—if none live beyond sixty-five, the fund will go on accumulating for ever; and if all were to live up to sixty-five, it would accumulate but so much the faster:—on the other hand, if all die within a few years after they have begun contributing, except those who live beyond sixty-five, and they live on to eighty or ninety, the insolvency, under a plan of calculation grounded on an average of ages, and a supposed regular scale of mortality, as between age and age, will be certain and enormous.

Digitized by Google

score, that the members, in their quality of bankers, are in every such society sufficiently within reach of one another, in their quality of customers to the bank: but this circumstance is in effect but another cause of exclusion, under the mask of a convenience; since, in as far as this condition fails, the society fails of extending itself. At the same time, it may be owing, in no small degree, to the difficulty of collecting together members within reach of one another, (that is, within reach of the common office, the public-house,) in number sufficient to form a society for this purpose, and capable of sparing the necessary proportion of the working time, that the benefit, such as it is, is mostly confined to towns.

As to the *times* for receiving contributions, and paying allowances, these are points that, in the instance of these societies, must be fixed by general regulation, and in respect of which little or no indulgence can accordingly be shown to individual convenience. The contribution must be so much a week, or so much a month: less cannot be accepted, for no further advantage can be allowed:—the time must be the periodical time of meeting, and no other.

As to the Company's system of Frugality-Banks, in point of mere vicinity, if confined to the system of Industry-houses, they certainly would be in no small degree inferior to the system of public houses which officiate in that capacity to the existing societies: but even were no further accommodation provided, the advantages it would have in those other respects seem to be more than an adequate compensation for this head of disadvantage. No tax,—no obligation to drink;—neither obligation nor invitation to rob the domestic circle of a regularly recurring evening. Ten miles, the utmost distance:—times more or less frequent, governed altogether by individual convenience:—the time consumed by the augmentation of distance might, in many instances, be made up for by the diminution in the number of attendances; and the time of the week might be the day (for wherefore should it not be?) on which time, considered in a pecuniary light, has no value.

Should this not be enough, the vestry-room of each place of worship presents an office as near, and the clerk an officer, or sub-agent, as suitable as can be desired. The minister and churchwardens would be his natural inspectors. In a place in which he is already stationed by his existing and more important duties, the smallest coin current, multiplied by the number of members, and that by the number of times of payment, in the instance of each, would afford a compensation more than adequate to his trouble. For the service thus rendered to morality, religion need not go unrewarded: attendance on the service of the day might be a condition precedent, and its *offices* rendered preparatory, to the exercise of this virtue. Money transactions are neither ill-suited nor foreign to the main business of the day, when sanctified by the *occasion*, or the *use*: witness surplice-fees, communion offerings, collections on briefs:—and if a money transaction be sanctified by charity, why not by a virtue which stands paramount to charity herself, by preventing the mischief for which her best exertions are but a palliative.

VIII. *Mode of Book-keeping clear and satisfactory.*—In the instance of the existing societies, the provision made in favour of frugality being so inadequate, the plan of book-keeping necessary will be proportionably simple: and indeed so simple, that the stock of literary acquirements existing in each society does not, it is true, appear likely to be found in many instances inadequate to the task. But the proposed Company, in their quality of keepers of a universal frugality-bank, would not extend their scheme of provision without providing a system of book-keeping altogether competent to the purpose. Under their management, that degree of competency, which at present is exposed everywhere to contingencies, would be certain and universal.

IX. *Exemption from collateral Inconveniences.*—Collateral mischiefs, to which the management of the Friendly Societies is liable to give birth, (as appears by examples from Eden,) and from all which, by the management of the proposed Company, the business would be cleared: 1. *Drunkenness* and *Dissipation*, as above. 2. *Disagreements* and *quarrels*—results mischievous to themselves, besides operating occasionally in quality of causes of *dissolution*, as above. 3. Combinations for sinister purposes, of a *professional* or other comparatively *private* nature:—such as rise of wages, (always in favour of occupations already overpaid,) or diminution of working hours.* 4. Combinations for sinister purposes of a *public* nature—the raging malady of the times.

Section VII. *Exigencies to which the Company's Bank is least competent.*—These are such, and such only, in which the result of the largeness of the society may be the danger of its not defending itself, with sufficient vigilance, against the arts of customers: the interest of each associate, in each transaction, decreasing as the multitude of associates increases.

Among these cases would evidently be to be found those of simple failure of employment, sickness, and provision for widows, on the supposition that, in return for the consideration-money received, the burden to an unlimited amount—to a value not limited by that of the consideration-money in each instance—is to be borne by the Company—1. As to *failure of employment*, the exigency itself is so absolutely dependent on the will of the customer, as to be palpably unsusceptible

* Combinations of this tendency, and of the most pernicious kind, are said to exist among the societies composed of *London servants*.

Digitized by Google

of being insured against on such terms. To a man who *has* an employment, which fills up his time, and affords him the means of living, it will not commonly be a very easy matter to *appear* to have none: but there is no man who could not so manage matters as *not* to have any such employment. 2. Sickness indeed is not altogether in this case; but it is too much so to be capable of being provided against upon these terms, by so large a company, without an evident danger of incalculable loss. 3. Even in the case of provision for widows, though the *event* from which the *actual* commencement of the burden takes its date, is *not* to be considered as being (as in the former cases) dependent upon the will of the customer; yet the knowledge of the matter of fact, in regard to constitution, occupation, &c., on which the probable duration of life depends, and thence on which the terms of the contract, or even the reception of a candidate, in his proffered quality of customer, may be made to depend—and therefore, in this way, the *probable* commencement of the burden, in each instance, *are* in no small degree dependent on his will.* Against the danger here in question, in the case of provision against sickness, there seems to be but one remedy, viz. the calling in the aid of the *duty-and-interest junction* principle, and taking for sharers in the bargain some individual, or small assemblage of individuals, whose personal interest in the event of each bargain shall be adequate to the purpose:—in the case of provision for widows, there is, besides the above remedy, that of reducing the burden of the allowance to a rate adjusted to the supposed utmost efficacy of the cause of disadvantage, and for that purpose supposing the lives of husbands (among the customers of the bank) to be as much worse than ordinary, and that of wives as much better than ordinary, as the purpose shall be found to require. If the latter remedy be not employed, there remains still unprovided against, in the case of this mode of provision for widows, the danger of a sinister and secret interest, on the part of the agent, strong enough to overcome the known and legitimate interest by which his fidelity is endeavoured to be insured; and, upon the whole, these are the branches of the trade of assurance which appear the least adapted of any to the constitution of the proposed Company. In the case of a provision for widows in no other shape than that of a superannuation-annuity, as the commencement of the burden depends—not (as before) upon the *badness* of the life of the *man*, but upon the *goodness* of the life of the *woman*, the danger of imposition has no place. This, as well as every other case of a superannuation-annuity, is as competent to the constitution of the Company as any branch of assurance can be: and as competent to the constitution of the proposed Company, as to any other Company, existing or proposable:—and this is the only shape in which provision for widows is adapted to the situation of the lowest-paid classes, that is, to the bulk of self-maintaining hands: for surely it is not a matter even to be wished for, that a woman who during her husband's life has been subjected to labour, should be raised above it by his death.

In those cases to which the Company's management is applicable with least advantage, it is not that this management is less competent to the enabling an individual to make provision for the *exigency*, but only as to the making provision against it in a particular *mode*—viz. in the way of insurance:—for, to a party

* Child-maintenance provision, where the demand for it results from the co-existence of an extra number of children under the self-maintaining age, is an exigency not altogether incapable of being thus provided for on its own bottom, and even in the way of insurance. For however the *reducing* the amount of the exigency below any given amount may, physically speaking, not be out of the power of the parties, (such a result being attainable by abstinences repugnant to the object of the institution,) yet the *increasing* the amount of the exigency, that is, the number of the children produced by any given marriage, is a result not subject to the will of the individual, as marriage itself, apparent idleness, or apparent failure of employment are. Whatever were the chance, in respect of the co-existent number of burdensome children found to obtain at *any* period, might therefore be safely taken as the *permanent* amount of the chance; since no other cause than the desirable event of a general increase in the national rate of vitality could occasion it to be exceeded. But the calculations would be complicated; and the stock of *data* requisite in the capacity of grounds for calculation is such, as is not to be obtained without the aid of government: inasmuch as a complete enumeration of the whole population would be absolutely indispensable; and when once made, it were better, for this as well as so many other purposes, that it should be regularly kept up. At any rate the sale of annuities co-enduring with this exigency, would, it is evident, be a business of too much complication and delicacy, and would require funds of too great a magnitude, to lie within the sphere of ability of any of the local associations. But by the proposed Company, (supposing the *data* to be but obtained,) it might be conducted with perfect safety and regularity, to the great advantage of the industrious and frugal individual, as also of the Company, if the company thought fit to take a share in it.

Among the cluster of donations, proposed with too little thought of the ways and means, and among the least exceptionable in its principle, was that of a gratuitous allowance for extra-children altogether at the public charge. A bounty to a more supportable amount, upon that same principle, might be afforded, by enabling the Company, at the public expense, to insure a family against the burden for a premium in such proportion inferior to what would be an equivalent, as should be thought fit. But whether this expensive mode of affording relief would be preferable to the unexpensive mode of administering it by the taking of extra-children upon the footing of Company's apprentices, the reader is by this time in a condition to judge.

Digitized by Google

who is content to be his own insurer, the Company's bank, (as we have seen,) holds out against this, as well as so many other exigencies, a provision not to be derived from any other source. If a man has *time* before-hand, it enables him to lay up a fund of self-relief, by means of which he may be provided for in his own way, at his own time:—if, for want of time, or otherwise, he has laid up no such fund, at the worst it provides for him, on the self-liberation plan, in an industry-house. Compared with self-insurance, insurance by contract, as in other cases, so, more particularly in this, seems, it is true, most favourable to happiness upon the whole: the distribution of good and evil being in this way more equable:—for though what there is of personal suffering in the case is incapable of being distributed, yet its concomitant, the pecuniary burden, *is* distributed by this means; and, by being distributed, the pressure of it upon the whole is lessened:—and the strength given by exercise to the benevolent affections, and to the habit of beneficence, is a kind of indirect advantage, which, in a moral point of view, is not to be contemned. To this mode of provision, the Company, though it were not itself to embark in the adventurous part, might afford very considerable encouragement and assistance. By undertaking, in terms attended with no risk to itself, but with a moderate advantage, the receipt of contributions, the payment of allowances, and the charge of book-keeping, the Company would ease the associations of all danger and apprehension of *embezzlement* and *dissipation:* it might release them of a great part of the burden of *attendance*, and exempt them from the dangers of *discord* and *dissolution*. It would contribute, in a great variety of ways, to increase the amount of the population thus associated: it might reduce the number necessary to the forming an association, by taking for itself (which it might do without danger) a certain proportion of the shares;—as far as ten (suppose) out of forty;—by enabling those to form a common *purse*, who, by reason of any of the causes of separation above spoken of—(as, religion, party, private disagreement, and the like)—might have been prevented from forming a common *assembly:*—in a word, it might remove, almost without exception, the various causes of *latent exclusion* above exemplified or alluded to.

So in the case of associations bound for annuities to commence at widowhood—the Company might perhaps not think it advisable ever to contract any obligation of that sort on its own account:—at any rate it could never pledge itself for the discharge of obligations already contracted on this score of existing associations:—but it might take their funds into its own hands, keep account of the produce, and undertake for the discharge of the engagements, as far as that produce extended, and no further.

The benefit that has resulted from these associations is as important as it is extensive: the principle of frugality being rendered popular, the foundation is laid, the chief difficulty removed. What regards relief under sickness is unmixed good:—thousands and tens of thousands must have been preserved by it from death, misery, and pensioned idleness.—But, of what concerns provision against distant contingencies, the result is in the clouds. It is in vain to inquire into remote effects, when the state even of existing causes is wrapt in darkness. Who can say to what extravagancies overweaning hope may not have soared, while unlettered minds have been left to wander in the field of calculation without a guide?—Take even the oldest of these bodies, the past prosperity, were it ever so universal, can scarce as yet have afforded any pledge of future. The oldest cannot as yet have reached the age of trial.* Meantime, safe or unsafe, how little they have done or can do towards satisfying the demands of frugality in their fullest extent, and in all their diversity of shape, has been already seen. The body of collateral mischief of which they may prove pregnant, appears not to be inconsiderable.† But whatever there may be of danger in the institution, results from circumstances that are altogether accidental to it—the multitudinous and unbridled concourse of rough and uncultivated minds:—democracy is no more of the essence of frugality, than it is of prudence, tranquillity, or science. The benefits result from the object itself, the disposition to frugality: the mischiefs, from the means which chance has hitherto furnished for the exercise of that virtue. Under the management of the proposed Company, the mischiefs would drop off of course: the benefit would remain—with vast increase of magnitude, and in its most perfect purity.

Were the disadvantages attached to these petty Frugality Banks, as compared with the proposed General Frugality Bank, ever so considerable, it does not follow that it would be abstractedly useful, any more than honestly practicable, to employ the hand of government

* Concerning the age of trial, see Dale and Price.

† Whatever may be the amount of this collateral mischief, nothing of imprudence or oversight can, with justice, be laid on this account to the score of government. Government did not make these societies, it found them ready made. By the special protection it holds out to them, it has afforded itself its surest chance for their attachment, as well as a peculiar title to their allegiance. After all, what it gives as a boon to this privileged part of its subjects in the shape of a reward for virtue, is no more than what government owes as a debt to all subjects without distinction—*accessible justice* and *liberty of residence:* the last, a blessing, the loss of which, the baneful fruit of the existing poor laws, is a misfortune peculiar to this land of otherwise so justly boasted liberty: a blessing which, by the proposed plan, and by nothing but the proposed plan, would effectually be restored.

Digitized by Google

to break them up. The Company's General Bank being added, and these particular banks remaining as they are, the customer, in this, as in most cases, could not but be a gainer by the competition. Whatever part of this business they chose should be done for them by the Company's Bank, it would always be ready to do for them on pre-adjusted terms: whatever part they either found they could not do or conceived that the Company would do for them better than they could do for themselves, they would of course give the doing of it to the Company: and if, in any instance, the result of their choosing to do their own business, instead of turning it over to the Company, should be its being ill done, they could only have themselves to thank for it. The cases in which it is not better for a man to suffer by his own will, than to be saved against his will, are neither many, nor very easy to determine. In every shape in which assistance could be wished —instruction—legal powers—pecuniary funds —trust-worthy hands—the Company, with its all-comprehensive and omnipresent Bank, would never cease to hold out to them a sure and inexhaustible resource.

Chap. VI. *Pecuniary Remittance facilitated to the Poor.*—Disadvantage the poorest and most numerous classes labour under, in this respect, the *relative* of expense of remittance increasing as the sum to be remitted decreases. A considerable proportion of the self-maintaining poor of this country are stationed habitually at a distance from their dearest connexions. In this humble line of life, so small a sum as a crown, or half-crown, might be no inconsiderable assistance—from a parent to a child—from a child to an infirm parent, or grand-parent—from a sister to a sister, &c.—There are individuals in this country, to whose expenditure £500 does not bear so great a proportion as half-a-crown does to the expenditure of many an individual among the self-maintaining poor.—Useful arrangements taken by the post-office relative to this head, since the first penning of this paper.* But these arrangements do not altogether come up to the present purpose: neither the least sum nor the retribution being quite small enough: nor does the post, in all places, reach the cottage of the poor.† This part of the business of remittance might be managed by the assistance of the Company, in and from the several industry-houses, for the benefit of the lowest paid classes, with proper checks, (such as the letters being sent open, &c.) to save the benefit from being usurped by those who have no need of it. The accommodation will of course be the more valuable, the more frequent and regular the intercourse between the several industry-houses and the parishes within their respective circuits. By the use proposed to be made of each vestry-room in the quality of a sub-office to the proposed system of *Frugality Banks*, the demand for this intercourse would naturally be increased. Leaving other days to casual opportunity, Sunday, the day of universal leisure and social intercourse among the poor, might be a day of regular communication, between each industry-house and the several parishes within its circuit. Special messengers would seldom be necessary. The visits which the inhabitants of each industry-house would of their own accord be making to their friends in the respective parishes, would in general, be sufficient for executing these and such other commissions as there might be occasion to give them from the house.—For the facilities that might be given to conveyance, see the next chapter.

Chap. VII. *Distant Conveyance facilitated to the Poor.*—Use of the industry-houses in the capacity of *frugality-inns* and *frugal-conveyance-stages.*—Mean distance from house to house, on one supposition, fifteen miles; on another, but ten miles and two-thirds. Inns are altogether unnecessary, where, comparing the distance between house and house, with the ability of the traveller in respect of self-conveyance, he can make his way from house to house without stopping for a night's rest. But houses for stopping at in the day time are not necessary to the poor traveller. Repose he finds, at the worst, upon the ground; food he carries in his pocket, from the industry-house where he slept. The cheapest beasts of draught (asses) might be kept, at a small expense, in sufficient number for those who by childhood or infirmity were disqualified for self-conveyance.

I. *Uses in the Instance of the Industry-house Poor.*—1. The *transferable* classes distributed all over the country without expense, wherever food is cheapest, or labour, such as they have respectively to bestow, most in demand. 2. A pauper, on his becoming burdensome, conveyed from his last abode to one of the nearest industry-houses without charge; sufficient conductors, where requisite, being always to be found among the population of the house.

* By a regulation of very recent date, the intervention of the different classes of officers, which Government, for other purposes, has occasion to station, in spots more numerous than those of the proposed industry-houses, (though still not so numerous as the parishes,) have been employed for the purpose of enabling seamen in the king's service to correspond, in the way of pecuniary remittance, with their families, wherever situated. The benefit of this arrangement is beyond calculation: —morality, as well as convenience, is served by it: —many a family, which used to be a burden to the public, derives now its nourishment from the natural source; and no inconsiderable portion of national wealth, which used to be worse than thrown away, is now applied to purposes of real and necessary use.

† Defects in the post-office arrangement have, in this respect, during the present year, (1841,) and the immediately preceding, been materially amended by reducing the rate of commission.—*Ed.*

Digitized by Google

3. A well-behaved pauper, on his petition, conveyed, by indulgence of the Company, to the abode, or to the industry-house nearest to the abode, of any of his near connexions, whom he wishes to visit, though it were at the remotest part of South Britain. If able, no loss, for want of his labour, need be incurred. Ten, or even fifteen miles a-day, would scarcely make too large an addition to his ordinary day's labour, even if it were of the hard-work kind; none at all, if it were of the *sitting* work, or other *slight*-work kind. When not employed for travelling, as above, the asses, attached to proper vehicles, might serve for giving open air, in conjunction with exercise, to the children beneath the self-conveying age, and to the bedridden—especially on Sundays.—(See Book iv. PAUPER COMFORTS.)

II. *Use to the self-maintaining Poor*—Travelling all over the country, wherever their occasions lead them;—setting out without money, and arriving with money in their pockets.* At present this cannot be done, because there is nobody in a condition to give employment at such *short warning*, in large or small *quantities*, as it may happen, to persons *unknown*, coming in any *number*. A man, having money in his pocket, might work or not work, as he chose:—taking the benefit of the diet and lodging at the cheap price of the house, instead of using a public-house, under the obligation of paying for expensive food and liquors. Domestic ties would be strengthened, and social affections cherished, by laying open, in this way, to the poor, those opportunities of occasional intercourse and uninterrupted sympathy, which at present are monopolized by affluence.

Persons *under engagement* to, or in relation to whom this accommodation might be particularly convenient—1. Soldiers; 2. Militiamen; 3. Seamen; 4. Marines:—on furlough, or when disbanded:—and with or without their children.—No expense to the public—no scandal of begging—no danger of stealing or robbing, on pretence of begging.

III. *Persons not under Engagement.*—1. and 2. Welsh and Irish harvesters, periodically visiting—3. Settlers and employment-seekers from Scotland—4. Accepters of offers of employment in the several branches of industry, to and from every part of England, as advertised in the Company's Employment-Gazette—(See Ch. i.)—So many industry-houses as a man were thus led to visit, so many establishments, alike prepared, in the capacity of *frugality-banks* and *remittance-offices*, to enable him to lay up, improve, or remit, whatever savings he may have made.—(See Ch. v. and vi.)

IV. *Confined Hands—Persons travelling in Custody.*—1. *Suspected* hands, arrested, and to be passed, on mesne process, or in execution. 2. *Delinquents*, by delinquencies of an inferior class, arrested, and to be passed, on mesne process, or in execution. 3. *Debtors*, arrested, and to be passed, on mesne process, or in execution:—the debtor having the option to bait at an industry-house, or at a public-house:—an important saving to poor debtors, and thence to their poor creditors:—each industry-house containing a *strong ward*, with provision for appropriate *separation* and *aggregation*, carried to the utmost extent, (see Book ii. Ch. ii.) and capable of affording assistance, upon occasion, to constables and bailiffs. Thus would be superseded the necessity of *irons* for suspected hands, and the expense of occasional extra guards for confined hands of all classes. Debts *would* thus be payable by industry-houses, though not by *prisons*.—See the ensuing chapter.

Chap. VIII. *Imprisonment rendered unexpensive and reformative.*—Efficient causes of *corruption*—1. Idleness (*i. e.* want of *honest* occupation.) 2. Corruptive aggregation. 3. Exemption from tutelary inspection. 4. Access to the means of intoxication.—Efficient causes of *reformation*, the reverse of the above. 1. Industry (*i. e.* honest and profit-yielding occupation.) 2. Tutelary as well as innoxious aggregation. 3. Constant tutelary inspection. 4. Seclusion from the means of intoxication.—The *presence* of all these causes of corruption is of the essence of a prison: a few of the lately improved prisons excepted, where an imperfect dose of the efficient causes of reformation, (viz. industry, absence of corruptive aggregation, and seclusion from the means of intoxication, but without tutelary aggregation, or constant inspection,) is purchased, by means of separate lodgment, and thence at an enormous price. The perfect *absence* of all the efficient causes of *corruption*, the perfect *presence* of all the efficient causes of *reformation*—is equally of the essence of a proposed industry-house.† None of these requisites of a prison (except confinement) are to be found in *any* ordinary prison: all of them would be to be found in *every* industry-house. Practical consequence—common prisons ought to be extirpated as common nuisances: and their function supplied by a

* Expense of a day's maintenance for a man, not so much as 4d.;—but say 6d.:—worth of day's work, not so little as 1s.:—a quarter of each day expended in travelling from house to house;—this would leave three-quarters of a day to work in, and earn 9d.—At this rate, a poor *man* might work his way on from house to house, any number of days together, without intermission, putting 3d. a day into his pocket to his journey's end, instead of being at any expense.—In the case of a *woman*, expense 3d.;—but say 4d.:—day's earnings, 8d.:—three-quarters ditto, 6d.:—money in pocket each day, 2d.

† Unceasing inspection, conjoined with appropriate separation and aggregation, does whatever good solitary confinement *can* do—does what it can *not* do—can be continued for any length of *time* without mischief—and is free from the unsurmountable objections to which the latter is exposed, under the head of expense.—Solitary confinement, like mercury, is good, not for diet, but for medicine.

Digitized by Google

strong ward in each of the proposed industry-houses. An industry-house would need no Howard—no Paul—no Pitt.—Every man might be a Howard without danger, difficulty, trouble, or merit. Any man by looking at the Company's Journal might know incomparably more of *every* industry-house, the prisoner-part of its inhabitants included, than Howard could ever know of *any* prison: the passing moment filled the measure of his knowledge.—Terror and safe custody are the only purposes answered at present by the use of ordinary prisons: those securities being indispensable, prisons of some sort or other must still be employed, though corruption, instead of reformation, be the price paid for the advantage. Some men must be sent there, or the fear of being sent there would not find its way into the bosoms of the rest. Prisons *are* what they are, because they *have been* what they are: when prisons were first built, not an idea of the system of *antiseptics* here exhibited had ever presented itself to view.

In process of time the whole system of imprisonment might be undertaken by the Company, to the universal advantage of all parties interested.—Debtors and delinquents from the higher lines of life, are the only classes of prisoners who could not be accommodated to advantage in a proposed industry-house, without additions for the purpose.

Precedent debts, due to creditors at large, might as well be worked out upon the *self-liberation* plan, as debts due to the Company for sickness-relief administered in advance.*

Chap. IX. *Domestic Morality enforced.*—At present, unless the disease be violent indeed, imprisonment, the only remedy, (besides being mostly placed out of reach by the expenses, natural and artificial, of procedure,) being but an aggravation of the disease, domestic disorders, are, as it were, without remedy. A fit remedy would, for the first time, be brought into existence by the proposed industry-houses.

I. Classes to whom an industry-house might be of use in the capacity of a *reformation-house*—1. Bad apprentices—at the instance of the master.—2. Bad children—at the instance of the father or guardian.—3. Bad wives—at the instance of the husband.—At the instance of the father, by the mere parental authority—in the other cases, by adjudication of one or two magistrates.

II. Conversely, it might be little less useful in the capacity of an *asylum* against domestic tyranny:—1. From the power of a bad master—2. a bad father or guardian—3. or a bad husband.—In this latter case, adjudication, it should seem, would be scarcely necessary. Without serious ill-treatment, a wife would hardly exchange matrimonial comforts, an independent abode, and the government of a family, for celibacy under inspection—in company of her own sex only, and not of her own choice. Spite, or a project of governing the husband by fear of the privation would hardly go such lengths:—neither malice nor ambition are to such a degree stronger than self-regard.—Preferableness of such an asylum to a domestic one in the present case, though it were under the protection of a parent, or elder relation of the same sex.—Elopement, though it were to the house of a natural guardian, is seldom exempt from danger, never from suspicion, during the attractive age: Infidelity, when it was not the cause, being in such circumstances but too natural an effect.

On reconciliation, the industry-house, like a well-regulated convent, but free from the objections that attach on convents, would restore the fugitive, without spot or suspicion, to the marital arms.†

There, as in a convent, conjugal infidelity, become scandalous, might moreover receive its punishment, from a tribunal of magistrates—sitting in private, unless publicity, with or without the intervention of the ecclesiastical court or a jury, be reclaimed by either of the parties.‡

III. Utility of the industry-house regimen, to divers classes, comprised within the principal design of it, in the character of a *certificate*, as well as of a *pledge*, of good behaviour, in their respective spheres. 1. and 2. To out-of-place *domestic* servants of the female sex, it would be a preservation of chastity and of reputation of chastity: so of the habit of industry and regular obedience, in both sexes. 3. and 4. To *repentant* prostitutes, and to *friendless* females, at the approach of the perilous age, it would be an *asylum* for the benefit of the lower classes, that is, the great bulk of the community; doing, upon a universal scale, and without expense, that sort of good which is endeavoured to be done upon a minute scale, but at no minute expense, by two magnificent as well as benevolent institutions—in a style of accommodation, congenial (as is but natural) to the habits and sentiments—not so much of the classes into which they are to be returned,

* Not a debt paid by the humane and respectable society instituted for that purpose, but might have been paid with still more advantage by the debtor himself, in a proposed industry-house. In two months the largest court of conscience debt would be worked out, though the charge of maintenance were as high as 4d. a day, and the earnings no more than 1s. Number relieved to 4th April, 1798, 15,827: average amount of debt, costs included, £2, 10s. 8½d. [Herald, 16th April, 1798.]—Excellent this! yet, how much more excellent, that he who owed his imprisonment to his own act, should owe his deliverance to his own industry.

† In this case, as in many others, the legal remedy—*divorce a mensa et toro propter sævitiam*—is rendered altogether inaccessible to the self-maintaining poor—that is, to the great bulk of the community—by the artificial expenses of procedure.

‡ The exhibition of a wife, sold like a beast with a halter about her neck, in a public market, would not then, as at present, offend the moral eye.

Digitized by Google

as of those higher classes to which they are indebted for their support.

IV. Under the plan already traced, the Employment Gazette itself (see Ch. i.) will be a perpetual school of morality—an inexhaustible fund of unexpensive premiums for good behaviour. The more *points of good character* a man can muster, the better and speedier his chance for employment, and the better the terms upon which he will be received. The inference is natural from theory; and there will be the evidence of experience,—published experience,—to show whether it be not just.

Let it not be imagined, that because the *place* is the same, the *treatment* given in it may not be infinitely diversified. There is nothing either in relief or in correction, that should render them incapable of being administered—administered to the pinnacle of perfection—within the compass of the same walls. Even now, the same chamber is witness to the caresses given to the dutiful, and the chastisement given to the froward child. It is in truth but through want of wisdom, not by any law of nature, that the disparity has remained hitherto so wide between penal justice and domestic discipline. *Good order* is a condition not less necessary to the delicacies of domestic comfort, than to the utmost severities of public justice. The presence of the fostering hand is not less necessary to the infant, of the feeding hand to the hungry, of the assisting hand to the infirm, of the healing hand to the sick, of the soothing hand to the afflicted, or of the ministering hand to the luxurious, than that of the avenging hand to the criminal who is to be punished for his crimes. The one thing needful was a perfect and general instrument of good order;—an instrument not to be constructed without the aid of the *inspection-architecture*. The *desideratum* being found, good order may be introduced into any system of management, and applied to all purposes that end in utility, however wide of each other they may appear to spread at the first stage.

Chap. X. *National Force strengthened without Expense.*—Section I. *Land Force.*—Another collateral benefit, of a most important nature, deducible from the proposed industry-house system—without effort—without disbursement—without expense to anybody;—a nursery—a supplement—and, in part, a *succedaneum*—to the existing system of national defence.

One of the members of the official establishment a drill-serjeant:—on Sundays to act as such, in training the fencible part of the apprentice-stock, after an appropriate prayer:—on week-days, in the capacity of a clerk.—Arms for exercise, whatever have been condemned as unserviceable, as far as they will go.—Age of training, from fourteen, or earlier:—age of requisition, from eighteen, seventeen, or even sixteen:—numbers to be expected, by the time the accumulation of the apprentice-stock has attained its maximum (according to a *basis* of calculation not now relied upon, but to which the eventual number, if deficient, might, by the means of extension hereinafter suggested, beyond a doubt be raised) from sixteen to eighteen, 29,296; from eighteen to twenty-one, 42,841; from sixteen to twenty-one, 72,137.

The establishment of officers would be framed, of course, upon the existing constitutional plan:—some of the inferior, the Crown might perhaps find a convenience in selecting out of the official establishments, to whose authority those privates will have been in the habit of paying such unvarying obedience;—the superior, from the landed strength of the country, as at present.

Utility of a corps thus constituted, not only against the rare and contingent danger of invasion, but as an eligible and universally present *succedaneum* to the less popular assistance of the regular force, against casual tumults, the result of *sudden* and *partial* discontents. Sequestered from the world at large, the intercourse, as between house and house, written as well as personal, being altogether at the Company's command, (that is, through the Company, at the command of Government, and of that Public on which Government depends for its existence,) no existing body of military force could be equally proof against seductions and combinations. Completely trained by so many years of exercise, at the expiration of their apprenticeship, and consequent diffusion into the mass of the population, they would form an ample fund of disciplined force, ever ready in the hour of exigency.

Not the slightest idea of hardship could attach upon this gentle and self-executing institution. Under the military conscriptions that prevail in Russia, Austria, and Prussia, the discipline is severe, the service constant and frequently foreign, the danger frequent, and in full prospect. *Here* the service is purely home-service, the duties occasional only, the dangers no other than what they will have been prepared for from birth; and those contingent, and, unless at a moment like the present, scarcely to be looked upon as probable:—the whole concern, (instead of a terror,) an exercise, a pastime, and a spectacle.—No need of their lodging, any of them, anywhere out of an industry-house, unless in case of an immediate approaching invasion. Were even the service ever so irksome, and the dangers ever so serious, there are none, surely, on whom the lot could fall with equal justice, as upon those who, indebted to public charity, all of them for maintenance and education, many of them for life itself, may literally be termed the *foster-children of the country*.

Inconveniences attending the militia establishment, on its present footing.—The obligation falling by lot on individuals, many of them ill-adapted to it by disposition, none of them prepared for it by education:—married men taken from their families, and the burden of

Digitized by Google

maintaining those families thrown upon the public;—a great and recent addition to the burden of the poor-rates:—all of them exposed to the influence of corruptive aggregation, and initiated (since such is the custom) into habits of idleness and dissipation:—all thrown out of employment;—a means of existence which, on their return to their families and homes, many of them may find it difficult to recover.*

Section II. *Naval Force.*—The maritime industry-houses adjacent to the sea-coast, or great rivers, would be a natural nursery for the navy—private as well as public.—A suitable turn might be given to the education of the apprentice-stock—Swimming universal.† —Here they might be initiated, from the earliest age, in the exercise of the handicraft arts practised on ship-board.—Examples—Oakum-picking—rope-splicing—sail-making—net-weaving—even ship and boat-carpentry: alternately with land trades, in peace time: practised exclusively, in war time.—(See Book ii. Ch. viii.)—Navigation, the literary part of it, might be added *here* to whatever school-learning were taught on Sundays, on the principle of the Sunday schools.—Minds as well as bodies being thus prepared for this branch of service, by original destination, education, example, and habit, the male youth of the maritime industry-houses would constitute a sort of naval militia:—but should, at the same time, be trained to the land exercise, as well as those of the inland houses.

In situations where the fishing business could be carried on at ordinary times without loss, upon occasion of a glut, instead of degrading this valuable food to a manure, the opportunity might be embraced of victualling the circumjacent industry-houses to a considerable distance—inland as well as coastwise.‡

Could any use be derived from the maritime industry-houses towards forming a chain of signals?

The chain of maritime industry-houses might form a valuable addition to the existing stock of sources of relief against ship-distress and shipwreck. By means of an out-post or two, here and there, betwixt house and house, a chain of telegraphic communication, embracing the whole coast, might thus be kept up at a comparatively small expense.

Section III. *Naval Timber.*—By Report 11th of the Commissioners for inquiring into the Land Revenue, (printed in 1792,) the stock of ship-timber in the country is lessening and growing precarious.—The nature of the proprietorship, in the case of the proposed Company, would be peculiarly favourable to the rearing and maintaining of a stock that can be depended upon. The landlord here would neither be forced by necessity, nor so much as have it in his power, to cut timber at a premature growth.—Elsewhere it requires a numerous and uninterrupted succession of frugal and uninterruptedly prosperous landlords, to preserve an oak to its full size. Here the vegetable hopes of the nation would not be left at the mercy of careless, malicious, or predatory tenants: no persons having access to the plantations but such as would be more under command than either the neighbours or the inhabitants of a private estate, and incapable of enjoying the fruit of depredation without discovery. The preservation of the plantations might be rendered the joint interest and concern of the Company and Government. The Company, at the same time, might lie under a perpetual injunction as to the cutting of timber, otherwise than with the allowance of government; and might be under an obligation to keep a perpetual account of it, tree by tree:—a sort of obligation to which ordinary proprietors cannot be subjected. A periodical state of the timber, verified by oath of proper eye-witnesses, might be included in the Company's periodical *Reports.* The plan of book-keeping would of course be extended to this most valuable part of the stock. The plantations delineated upon a scale in which, from the first, the number of plants within a given square, and, after thinning, the place of each remaining plant might be marked, and the plant denominated by a number.—Annual surveys, enumerations, and valuations.—Plantation book,—in which every plant, as it disappears, shall be marked off, and the cause, or supposed cause, of its disappearance entered under heads:—as, *natural decay—blown down—destroyed by animals*—(naming the animals, when ascertainable, as hares, rabbits, &c.)—Places for a plantation in every industry-house demesne, where soil and situation permitted, would be, 1. The *ward-separation belt*—2. The *exterior-sequestration belt;* viz. the belt planted for the purpose of contributing to the general design of sequestering the apprentice-stock from promiscuous association with individuals at large.—(See Book ii. Ch. ii. and iii.)

Chap. XI. *Rate of Infant Mortality diminished.*—Under the head of *Child-nursing,* (Book ii. Ch. ix.) together with what bears relation to that subject, in the chapter on the *Principles of Management,* (Ch. iv.) a plan has been sketched out, by which the rate of mortality, during the whole of the apprentice-period, but more particularly during the trying period of infancy, bids fair for being reduced to its lowest terms:—lower, much lower—for what should hinder it?—in this hitherto neglected line of life, than in those higher

* For the advantages of taking the earliest youth for the period of military service, see a very ingenious, judicious, and well-written paper, in Roederer's Journal d'Economie politique.

† On board of king's ships, not half, scarcely a third, (I have been assured,) can swim. Five or six have been known to be drowned in the course of a voyage.

‡ At a pound a-day per head, (adults and non-adults together,) two carts, holding half a ton each, with an ass to each, would carry, in a day, a day's provision from one house to another.

Digitized by Google

lines,—the highest not excepted,—which command every attention that opulence can procure.

Under the head of *Education*, including what bears relation to that subject in the chapters on the *Principles of Management*, and on *Employment*, a plan has been sketched out, by which, under that important head, the condition of the Company's wards promises to be placed upon a footing obviously more eligible than that of the children of the self-maintaining poor, even in the highest-paid classes.*—Condition in life is better and better, in the *ratio* of the stock of ways and means to that of wants. Here the *ratio* is increased at both ends. The stock of wants reduced to the lowest limits, by being confined, from the beginning, within the circle traced out by nature: the stock of ways and means, on the other hand, augmented by a multiplication of talents and employments, and thence of securities for future livelihood, hitherto without example.

But should it appear, that the condition of a Company's apprentice is more eligible in every point of view—probability of life and health, good conduct, and assurance of future livelihood, than that of his fellows without-doors: and of this superiority, such part as is demonstrable (which is the case with so much as regards life and health) should stand continually demonstrated to the eyes of all men, upon the face of the *Reports*, natural affection, would in many cases join with economy, in disposing a prudent parent to put his children in possession of the same advantages.

An arrangement of this kind would operate to the unspeakable advantage of all parties. The causes of good management would be reacted upon and strengthened by this collateral effect. Good management bestowed on the indispensable or free-school part of the non-adult stock—the bound apprentices—would procure a stock of volunteers in the character of *boarders:* and as the profits derivable to the Company and its agents, from these boarders, would operate when the time came, so would the prospect of it operate, from the beginning, as an incentive, calling forth and applying their utmost exertions to the rendering the condition of these their wards as advantageous, in every respect, and as conspicuously and unquestionably so, as possible. By the reduction of infant mortality among the pauper stock, the way would thus be paved to a similar reduction among the offspring of the self-maintaining stock: and the prospect of this latter reduction, and of the profit that might accompany it, would tend in the most powerful degree to promote and increase the original reduction, in the instance of the pauper stock. Sow *causes*, and you will reap *effects*.—Can it be wondered at, that the crop of good effects should in this field have hitherto been so scanty, when the list of good causes sown is so mere a blank!

By the defalcation of all factitious wants,—by the reduction in the expense of inspection,—(the result of the inspection-architecture principle, and of the advantage of operating on a large scale,)—the expense of rearing youth, in the best manner, may not only, without the smallest prejudice in regard to probability of life, health, or comfort, but with increased benefit in all those respects, be reduced to a pitch considerably below the amount of what a sufficient allowance of the stock of articles deemed *necessaries*, according to the customary mode of living among the working classes, could be afforded for in a private family of the working class. The difference betwixt the *customary* expense of maintenance, and the *necessary* expense of maintenance, upon an *improved* plan, would be found so great, as to admit of the Company's reimbursing the amount of the receipts upon as many of their boarders as happen to die under their care, reserving still a profit sufficient to afford to the Company, and its agents, an ample recompense for every exertion they can bestow.†

Here, or hereabout, might be the *maximum* rate of receipt and profit.—Under this, the

* For a summary but detailed and comprehensive view of the advantages peculiar to this and other branches of the Company's population-stock, see Book iv. PAUPER COMFORTS.

† *Example of the profit derivable to the Company, and, at the same time, of the saving obtainable by the parent, on a child thus taken in to board,—beginning at the first year of age.*

	Per Week. £	s.	d.	Per Year. £	s.	d.
Expense paid for a pauper in some of the London parishes . . .	0	3	6	9	2	0
Price to be charged by the Company, say .	0	2	8	6	18	8
Expense to the Company, say	0	1	4	3	9	4
(Expense at Glasgow, among the self-maintaining poor, as per Ch. v.)	0	0	6½	1	8	2
Deduct for deaths, ten per cent.				0	13	10½
Remains, neat profit, ninety per cent. upon the £6, 18s. 9d.				2	15	5½

In Halley's Breslau Table, the rate of mortality within that period in Breslau, the capital of Silesia, is fourteen and a half per cent.—but the proposed industry-houses are all in the country—and the attention paid will be beyond what can be paid, even in the country, among the self-maintaining poor.—If the children dying within the year, were to die equally in all days of the year, it would come to the same thing as if each had lived, and the expense upon it been continued but *half* of the year: but of those who die in the year, more than half die within the first *quarter*, (See the Chester Table, in Price on Annuities,) so that the deduction of £10 per cent. is in truth too large.—Remains £90 per cent.—This for the first year of age: in the subsequent years, up to the period of self-maintenance, the necessary expense is not greater, and the

Digitized by Google

terms might be accommodated to the circumstances of the parents, at the discretion of the Company, in favour of the lowest-paid classes. As to the state of those circumstances, in each instance, the Company being master of its own favours upon its own terms, there could be no difficulty about evidence. The existence of a positive value, in the case of an average child in this situation, for the period between birth and twenty-one, being a point supposed to be established, the child would stand as a security for the expense of its board: on this condition, the terms of payment might be accommodated to the convenience of the child's friends; except that if the score were not cleared by the end of a certain time, (say a twelvemonth,) the child should become *forfeited*, i. e. considered as bound till twenty-one, in the character of an apprentice. Regular payment should be required, at any rate, for some of the first weeks, lest a child supposed to be likely to die should be brought to the Company, for the purpose of its dying under their care: a result by which (besides the expense of burial, &c.) the reputation of the management, in this respect, would be injured. At whatever age a boarder of this sort happens to die, under the charge of the Company, the whole of the money that has ever been paid with him should be returned: though it then will, of course, make the reduction greater and greater the older the child is at the time of his death, it will not, however, by the time of his arrival at the age of self-maintenance, have reduced the profit so low as to eighty per cent. For the purpose of this eventual receipt, a testamentary guardian, appointed by the will of the surviving parent, might stand in the parent's place: in default of such appointment, the money might lapse to the Company, and the child remain to the Company on the footing of an apprentice. The older the child, when first placed with the Company on this footing, the greater, of course, the advantage to the Company; since so much more of the expense of the unproductive period will have been defrayed, and so much more of the period of greatest mortality will have been got through.

If a parent, able to pay in this way for a child's board, chooses rather to bind him to the Company on the footing of an apprentice, the money that would otherwise have been employed in paying for his board, would, if invested in the Frugality-Bank, have produced, by the time of his arrival at twenty-one, a very considerable sum, which at that time might even serve as a capital to set him up in business; or, in case of a female, would afford her a marriage-portion:—without interest, £145 : 12s.: with benefit of compound interest, at four per cent. about £219:—at five per cent. about £247.—On this plan, in the event of the death of the child before his arrival at full age, the parent would, in compensation for the wound suffered by his affections, find himself not only relieved in pocket, but enriched.

Examples of classes of persons, in whose circumstances it might be particularly eligible to a man, to have his children taken care of, from birth, or soon afterwards, for the first years, (say the first two, three, four, five, six, or more years,) according to circumstances; and who would naturally be disposed to profit by the opportunity, could they have, and at the same time be known to have, as full assurance of the child's being preserved in life, health, strength, and good habits, as they could have were it to be kept at their own homes, or at any other private house.—1. Domestic servants—in whose case it would have the farther good effect of removing an obstacle to marriage. 2. Widowers among the self-maintaining poor, left with small children. 3. More especially widowers of the seafaring and other classes, whose occupations carry them frequently to a wide distance from home. 4. Married men, with young children, and diseased, infirm, or ill-behaved wives. 5. Married men whose wives were engaged in business for themselves, or whose whole time was wanted for the assistance of their husbands. 6. Fathers who, having young children, have given them step-mothers.

In proportion as the success of the plan came to be demonstrated, and the proposition established, *that a child's probability of life is greater in an industry-house than elsewhere*, parents even of the superior classes, who otherwise would have put their children out to nurse, or to an early boarding-school upon the ordinary footing, would see the advantage of trusting them to the Company in preference; at least up to that period at which a child begins to require, as supposed, a mode of treatment adapted, in point of society and instruction, to the rank and circumstances of the circle in which it will afterward have to mix: and if averse to avail himself of the pecuniary saving, a man might make what further recompense he thought proper to the Company or its agents, or give the whole, or any part of it, to be applied in his own way, in augmentation of the fund for pauper extra-comforts. —See Book iv.

Means of ascertaining the rate of mortality, particularly at the first years of life, in the community at large, to serve as an object of comparison with that of the pauper community, particularly at the same years of age, under the Company's care, for the purposes above proposed—The Company, by its agents, at the respective industry-houses, to procure, at stated periods, copies, or sufficient abstracts, of the registers of the several parishes comprised within the circuit of each industry-house. Such copies or abstracts, attested, in each case, by the resident minister and parish

rate of mortality much less: in Christ's Hospital, though in London, never more than one and a half per cent.

Digitized by Google

clerk, might be periodically transmitted by the clerk to the chaplain of the house; each parish being visited for that purpose by a pauper of the house, whose connexions lay that way. *—(See Ch. v.)—From these returns, tables to be made, under the care of the chaplain, exhibiting the rates of mortality, absolute and comparative, for the several ages, as between the population of the *industry-house*, and the general population of the industry-house *circuit*, in which it stands. Of these tables, regularly published at weekly or monthly intervals, the result might be read and exposed to view in the churches, (as proposed in Ch. i.) and would thus be perpetually presenting itself to the eyes, as well as the ears, of parents of all classes, the poorest not excepted.

Such are the documents necessary for demonstration; and for which, therefore, it would be necessary for a parent to wait, if nothing less than demonstration could satisfy him in such a case. Yet where the security is in itself so strong, and the appearance it affords of attention, at least, so much beyond anything that is to be had from any other quarter, the number, to all appearance, would not be small, to whom the principle itself, without waiting for the result, would appear a sufficient ground for confidence.

The above securities for infant life not only have hitherto lain altogether out of the reach of parents, but are not so much as capable, in their full extent, of being afforded on any other than the plan here proposed.—Requisites, the concurrence of which is necessary to this purpose. 1. Capital for the maintenance of a stock of children in sufficient number to fill up the whole time of a set of nurses, acting as checks upon one another, several at a time, and relieving one another in such manner as to continue the attendance without interruption, night as well as day. 2. Ditto, for the maintenance and pay of the nurses themselves. 3. Ditto, for a sufficient stock of suitable superintendence, medical as well as economical, constantly present. 4. Ditto, for a building adequate, in point of magnitude, to the above purposes. 5. Ditto, for ditto, suitable in point of construction, *i. e.* constructed upon the central-inspection plan. 6. System of book-keeping regular, suitable, and all-comprehensive. 7. Means of exhibiting the relative rate of infant mortality in the establishment, as compared with the average rate without doors.—Where children are taken in to nurse, on the ordinary plan, the nurse having a house and a family to manage besides, can spare but a part of her time for attendance on the children, and is therefore scarcely looked upon as capable of taking care of so many as from six to eight children at a time: what she receives for these children must therefore, besides defraying the expense of their maintenance, be sufficient to defray the personal and house expenses of the nurse. Not being secure of a sufficient number for a constancy, she could not afford to take them upon the life-assurance principle: hence, when the preservation of infant life has been made a capital object, (as in the *Foundling Hospital*,) and the employment of the duty-and-interest-junction principle recurred to as a means, the only modification of it employed has been the giving extra pay, in the way of a premium, in the instances where the object has been accomplished:—that is, when the child has been kept alive to a certain age.

Though the terms and place of boarding would be peculiar to the establishment, the method of treatment would, if crowned with success, spread itself, of course, in the community at large, by means of the girls employed in the house as *nursery-girls*; who, when out of their time, or, by the allowance of the Company, before that period, would naturally be sought after in private families. Hence, too, one sort of *post-emancipation* provision for this part of the apprentice-stock. To exhibit the rate of mortality, under this management, in private families, returns might be required to be made, by each nursery-girl, of the result of her management in every family she served—stating how long she served in each—whether she left the child dead or alive—if alive, whether in good health, or under any, and what infirmity, &c. From these returns, it might be collected how much was owing to local situation, or mode of life observed in the family, and how much to management—except in as far as the plan of management learned in the industry-house happened to be counteracted by the family. For obtaining these returns, so long as a nursery-girl continued in the service of the Company on the apprenticeship footing, the authority of the Company would suffice; to insure the communication after the expiration of the apprenticeship, the Company might be empowered to cause a bond to be given by each girl, conditioned for her making the proposed returns:—a certificate of good behaviour would, if customarily given by the Company, come of course to be required by each private mistress; upon this certificate might be printed a memorandum of the bond, with instructions how to make the entries accordingly, and blanks for the making of them: by this means a girl could never avail herself of her certificate, without exhibiting to view the obligation imposed on her in that respect, and showing how far she had fulfilled it.

Chap. XII. *Useful Knowledge augmented and disseminated.*—Observation and experiment compose the basis of all knowledge. This basis, in proportion as it spreads in extent, swells in solidity and value. Hitherto the stock of relative *data*, or known facts, the

* Parishes and parish-like districts, about 15,000: number of industry-houses, at the greatest, five hundred: number of parishes, &c. to an industry-house circuit, or district, on that supposition, about thirty:—at the least, two hundred and fifty: parishes, on that supposition, sixty.

Digitized by Google

materials of which this basis is composed, has been in almost every line, and more especially in the most useful lines, scanty, accidental, irregular, incomplete, both as to time and place,—the scattered fruit of the uncombined exertions of unconnected individuals. The institution of the proposed Company would afford the first opportunity ever presented to mankind, of enriching the treasury of useful knowledge by contributions furnished on a national scale, and on a regular and all-embracing plan; and would thus form an epoch —not only in political economy, but in many and many another branch of science. The sciences which now await this epoch, for a degree of improvement altogether unattainable by any other means, would thus be raised to a pitch of certainty, to which neither example, nor, till now, so much as conception, has perhaps ever reached.

The advancement of knowledge is performed —partly in the way of *extension* or *augmentation*—partly in the way of *propagation* or *dissemination*:—in the way of extension, in proportion as new lights are added to the old stock; in the way of dissemination, in proportion as the multitude of individuals, to whom any part of the existing stock of lights has been communicated, is increased.

I. *Augmentation of useful Knowledge.*—Examples of branches of science in respect of which the proposed institution may be made productive of this effect. 1. Medicine—the therapeutic branch, surgery included. The collection of *sick* and *ailing* books of the industry-houses, kept according to a universally pre-established plan, with proper abstracts, periodically made and published—exhibiting, in the instance of a multitude of individuals, amounting at the outset to (suppose) forty or fifty thousand, and capable of being increased, by the accumulation of the apprentice-stock, to a million and upwards—congregated in from two hundred and fifty to eight hundred establishments, spread over the surface of the country, at uniform distances.* 2. Medicine —the dietetic branch, (*a*) as to what concerns *food.—Sources of information*—The *mess-books*, as compared with the *sick-books* and the *progress-books*—exhibiting the effects of food upon health and strength, under the diversities, in point of quality and quantity, established for this purpose. (*b*) *Drink*—result of the total abstinence from fermented liquors, in the instance of at least the *apprentice*-stock, and *new-coming* stock, of all ages: to which might be added, by way of contrast, the result of the indulgence that might be given in respect to the whole or a part of the *old-stagers.—Sources of information* as before.—(*c*) *Temperature*—Some of the apartments kept uniformly hotter, for this purpose—some uniformly colder—others alternating.—*Sources of information* as before: with the addition of the uninterrupted course of *thermometrical* observations; also of the entries in the *house-warming*, or *fuel* books. (*d*) *Commencement of sexual intercourse.*—Result of the early marriages proposed to be permitted and encouraged in the apprentice-stock, previous to the proposed respective periods of emancipation of the two sexes.—*Sources of information*, the *sick* and *ailing* books, and *progress* books, as before.

3. and 4. *Mechanics* and *Chemistry.*—See *Domestic Economy*, *Technical Economy*, and *Husbandry*.

5. *Domestic Economy*:—in relation to (*a*) *food.—Sources of information*—The *mess* books, as compared with the housekeeper's *maintenance-consumption* books in relation to the raw ingredients, and the *fuel* book.—(*b*) *Fuel*, burnt for *heat.—Sources of information*—The *fuel* or *house-warming* books, as compared with that part of the *furniture inventory*, which contains a description of the stoves, &c.—the *house re-*

* Heads for a book, of the *elementary* class, (see Book ii. Ch. x.) exhibiting the journal of an individual, when put upon the *sick-list*.—By way of table, description of the person, in respect of name, sex, age, station, &c. as per *entrance-book*, with the day of the admission on the sick-list. I. First day of the disease.—Heads—1. Supposed *name* of the disease. 2. *Symptoms*, in a set of subordinate columns, sufficient for the reception of as many classes of symptoms as the human frame has been observed to be ordinarily susceptible of.—[A table of symptoms, already constructed for this purpose, with columns, sixteen in number, may be seen in a paper by Dr *George Fordyce*, published in the *Transactions of the Medical Society*—London, 1793 —under the title of "*An Attempt to improve the Evidence of Medicine.*"—Printed for Johnson: of whom may be had "*Blank Schemes for taking Cases*," according to the plan there exhibited.]—3. Prescription in respect of *employment*—viz. *a.* Cessation from all work. *b.* Change of work: *ex. gr.* from out-door to in-door. *c.* Abatement of work, by defalcation from the ordinary number of working hours. *d.* Ditto, by defalcation from the quantity of piece-work.—(In the three last instances, it is a case for the *ailing list.*)—4. Prescription in regard to *diet*—*a.* Diminution or increase of quantity. *b.* Change of quality. 5. Prescription in respect of *medicine.* 6. *Execution* of the prescription, in regard to employment, diet, and medicine, as above.—Change of temperature, by clothing or fuel, putting to bed, &c. may be considered as comprised under the head of medicine.) —7. *Subsequent* symptoms during the day—distinguishing such as appear to be the result of the prescription.——II. Second, and every subsequent day, same heads repeated, *mutatis mutandis.*——III. Last day—different modes of termination. 1. Cure complete, thence reinstatement on the *ordinary* or *healthy*, and thence on the *full-work* list. 2. Cure partial, or approaching—thence transfer to the *ailing* list. 3. Supervention of, or change to another disorder, deemed not incurable. 4. Ditto of, or to ditto, deemed incurable. 5. Death.

An elementary *ailing-book* will (it appears already) be a book of a compound form, comprising the heads of an elementary or individual's *progress-book*, or *working-book*, together with those of an elementary *sick-book*, as above exhibited.

Digitized by Google

gister of temperature, and *meteorological journal* for the temperature without doors.* (*c*) Ditto, burnt for *light*.—*Source of information*—The *house-lighting* book.†—So in regard to the other branches of *maintenance-consumption* expenditure. (*d*) *Child-management*:—the physical branch—Sources of information—*Child's progress* book,‡ compared with the *children's mess* books, distinguished according to sexes and ages, and the children's division of the *sick* and *ailing* books, distinguished in like manner.—For the intellectual or *didactic* branch of child-management, see article *Logic*, farther on.

6. *Technical Economy*.—Under this head may be compared the management observed in the several branches of *manufacture* carried on in the system of industry-houses. Everything that concerns management in manufactures, belongs either to mechanics or to chemistry, or to both together. What comes under the department of mechanics, is in general too well ascertained to afford much matter for registration: but this is not the case with what comes under the department of chemistry:—Examples: Brick-making, lime-burning, mortar and plaister-making, pigments or impregnations for wood, glass-making, pottery, tanning, bleeching, paper-making, &c. &c., all of them included in the system of pauper-employment, by the principle of self-supply. Appropriate details cannot be given without plunging into the details of particular manufactures.—For analogous examples, see what has been said in relation to the several branches of domestic economy, as above.—*Sources of information*—The several manufacturing progress books, as compared with the *manufacturing-consumption* books; to which may be added such particular derivations, according to the nature of the subject, as may come from time to time to be minuted down by zealous and intelligent superintendents in the different branches, at the instance of the Company, or of their own accord.

7. *Husbandry*—including *agriculture* and *gardening*.—*Sources of information*—*Husbandry-progress* books, compared with the *husbandry-stock* books: also the *meteorological journal*, or register of the weather, as below.—The framing a set of husbandry books, with instructions for the use of them, would be a noble field for the exertions of the Board of Agriculture.§—Abstracts of the results of these books, when kept, to be periodically made and published under the direction of the Board.—Utility of an official relation between the Company's Direction-Board and the Board of Agriculture.—The Board of Agriculture, as a department of Government, to operate as a *Board of Control* over the Agricultural proceedings of the Company, so far as concerns the reporting opinions to the King and Council, and to Parliament, as to the national consequences of any extensive measure, but without the power of directing or negativing—being thus to the Company's agriculture, what the *Board of Trade* is to trade in general.—Unexampled *interest*, as well as *facility*, which the Company would possess, with regard to the devising, ordering, and registering agricultural experiments, weighing the result, and applying it upon the most extended scale, to practice. The benefit and opportunity of extension being greater than what exists in the instance of any individual landholder, or landowner, in the proportion of the number of *industry-house farms* (from two hundred and fifty to five hundred) to one.

8. *Meteorology*—a branch of science, consisting chiefly in mere observation without experiment, but subservient to *medicine*, *domestic economy*, *technical*, and other branches of *chemistry*, and *husbandry*, in a variety of ways. *Sources of information*—The *meteorological journal of the house*, or register of the weather—to be kept by the *medical curator*, with the privity of the chaplain; whose assent to, dissent from, or absence, at the time of each entry, might be noted in the book.‖

* See this species of information exemplified in the account given by the Foundling Hospital of the savings by a kitchen on Count Rumford's plan, as advertised in the newspapers of 1797.

† For the sake of experiment, the expenditure under this head might be compared with the results of a *photometer*, or instrument for measuring the degree of illumination, invented and named by Count Rumford, and published in the Philosophical Transactions.

‡ Or Calendar of *Hebe*—so called by analogy to the Calendar of Flora; a term used by botanists to express a journal of the progress of vegetation.—(Hebe the goddess of youth, as Flora of flowers.)—Example of heads for a Calendar of Hebe, arranged in two classes—1. Advances independent of instruction:—First indication of fear; smiling; recognising persons; indication of a preference for a particular person; indication of dislike to a particular person; attention to musical sounds; crowing; appearance of first tooth; appearance of each of the successive teeth; duration and degree of pain and illness in cutting teeth; giving food or toys to others; attempt to imitate sound; laughing; general progress in bodily or intellectual acquirements, whether uniform, or by sudden degrees.—2. Advances dependent on instruction:—Standing supported by one arm; standing supporting itself, by resting the hands; token of obedience to the will of others; command of natural evacuations; walking, supporting itself by chairs; standing alone; walking alone; pointing out the seat of pain, &c.

§ For the importance, difficulty, and rarity, of a good system of agricultural book-keeping, see ANNALS OF AGRICULTURE, vol. xxviii.—a paper by the Editor. What pen so well able to cope with the difficulties, as that by which they have been so well delineated?

‖ A check upon carelessness on the part of the medical curator, who otherwise, to save himself trouble, might make entries without due regard to accuracy.—If the meteorological journal of a single spot be worth the place which it regularly occupies in the *Transactions* of the *Royal Society*, how much greater the value of a similar set of journals, for a

Digitized by Google

9. *Book-keeping*, in all its branches.—*Sources of information*—The books of the Company compared with the benefit derived from them in practice, in respect of the goodness of the management, under every head: a result which, according to the plan of book-keeping proposed, will be constantly apparent under every head, upon the face of the Company's periodical accounts, as published in the *Company's Gazette*.

10. *Logic*—In respect of a division of the branch of it termed by Bacon *ars traditiva*,—the art of communicating ideas:—in the present instance, the art of communicating ideas to uninformed minds.—*Sources of information*—*School-progress* book: containing minutes of the course of instruction pursued in each industry-house, in relation to the several branches in which instruction is administered to the non-adult class—regard being had to age, sex, choice and order of subject-matters of instruction, quantity of time employed, number of scholars to a teacher, and mode of teaching observed in each instance, with the results in point of success, absolute and comparative.*

II. *Dissemination of Knowledge*.—1. Whatever branches of instruction were expressly taught, or points of management practised, with success in the above or any other ways, in the system of industry-houses, would, upon the emancipation of the apprentice-stock, be disseminated, along with them, through the community at large. 2. They would in a less direct and certain way be disseminated, more or less, in the way of adoption and imitation, through the bulk of the self-maintaining poor; and in both cases to a degree of extent, and with a degree of rapidity, proportioned to the number of central points (the industry-houses) which the light of instruction would thus have to issue from.† 3. In the case where lessons were given in form to the apprentice-stock, or any other branches of the population of the house, non-adults, and others, of all ages, among the self-maintaining poor without doors, might be admitted on these occasions, in quality of auditors. This, by means of the structure of the building, (see the plate,) might easily be arranged, without any infringement on the *separation*-principle. 4. What was learnt by the house poor, rather by habitual practice than positive precept, might in some instances be communicated to those without doors, in the way of lesson, by courses of instruction directed especially to that purpose.

III. *Dissemination of Knowledge* continued.—Branches of knowledge, in relation to which instruction might be given, in a special degree, to visiters from without doors, beyond what came, of course, to be administered to the population of the house,

The art of *medicine*, (in the most extensive sense of the word,) as applied to the several sorts of *animals* maintained for the use of man.‡ The medical curator of the house, (if he has received that course of instruction, without which he ought not to be received into the house,) cannot be altogether a stranger to this important branch of science:—and a part of the qualification required of him, might be the having given himself the benefit of the valuable course of instruction, which of late years the neighbourhood of the metropolis, but of the metropolis only, has afforded in this line. Opportunities, more or less ample, of keeping up and enlarging his acquisitions in this way, will be afforded by the live stock of the industry-house farm. These acquisitions it might be made part of his duty to communicate to visiters from without doors, in a course of lectures, to be read on any day of universal leisure, on the principle of the Sunday schools Pursuing the plan originally devised by the learned and truly reverend Dr Derham, the instruction, rendered not merely *physical* but *physico-theological*, might be impregnated by the spirit, and rendered subservient to the sacred purpose of the day. Previous attendance on divine service, in the chapel of the house, might be made an indispensable condition:—a small fee, applicable to the augmentation of the stock of *pauper extra-comforts*, (of which in the next book,) might be required, or not, from visiters of the superior classes, and a ticket of recommendation from the inferior classes.

A system of instruction being thus provided, and rendered universally accessible, the having partaken of the benefit of it might be rendered a condition necessary to the faculty of practising anywhere in the character of a *farrier*. This might be accomplished, in the instance of this occupation, without private hardship, or public expense; which, in regard to occupa-

number of from 250 to 500 spots, equally distributed over the whole surface of the country?

* An *elementary* book of this kind—(see the chapter on *Book-keeping*)—a *Calendar of Minerva*, as it might be termed, would be a sequel, as well as in some measure a concomitant to the *Child's-progress* book, or *Calendar of Hebe* above-mentioned.

For examples of the success of the fellow-instruction principle, (employing children soon after they have received any branch of instruction in the capacity of learners, to communicate it to other children in the capacity of teachers,) see Dr *Bell's* account of the *charity-schools* at *Madras*—London, 1787—and a paper in the *Repository*, (a periodical collection in two volumes, published ten or twelve years ago,) giving an account of the result of the use made of that principle, in a charity-school of the higher class, in the neighbourhood of *Paris*.

† The mode of managing infants, as carried on by the assistance of the nursery-girls, may serve as an example of the indirect dissemination of that branch of knowledge, in both these ways.—See Chap. xi.

‡ The *veterinary art*—the term commonly employed on this occasion—extends not, in its proper signification, at least, beyond beasts of burden: it eaves out sheep, hogs, poultry, dogs, bees, &c.

Digitized by Google

tions in general, has been so vainly aimed at, and at the expense of such an enormous mass of hardship, by the *statute of apprenticeships*. Private zeal, sharpened, if necessary, by encouragement from the Company, would exert itself in bringing in, as occasion served, those necessary materials, which in this, as in so many other instances, may be termed the *food of science*. A domestic animal, overtaken by natural death, would, instead of being thrown by, or employed at once as carrion, be conveyed to the nearest industry-house, that the seat and causes of the disease may be subjected to examination, and the loss sustained by the individual compensated, in some degree, by the accession derived from it to the general stock of useful knowledge. In this way the good which has been the object of so much exertion, on the part of a respectable society, as well as of parliamentary encouragement, bestowed with so much judgment, though at the public expense, might, without further expense to the public, be multiplied from two hundred and fifty to two hundred fold.

So much for the augmentation and dissemination of useful knowledge. On this collateral topic, thus much must suffice at present. Were this application of the proposed industry-house system the only use, might it not even then be styled *a polychrest—an instrument of many uses*? In this point of view, at least, *Bacon*, from whom the *word* is taken, would not have regarded it with indifference.—Would the several uses in any respect impede—would they not rather promote and fortify each other!

To the several scientific societies—medical, philosophical, and economical—this source—this inexhaustible source of information, would be a perpetual treasure.—Nor is it in the nature of science to be ungrateful for the assistance she would thus receive. So many classes of well-informed, inquisitive, and communicative observers, to whom an interest would thus be given in the copiousness and accuracy of the information brought to view,—so many unpaid and incorruptible inspectors—so many discerning censors, and enlightened applauders—so many ready instructors and advisers—of the various classes of persons from whom the information would have to come.

Chap. XIII. *Voluntary Charity assisted and directed.*—1. Officiating in the character of trustee, is one mode in which the Company may afford an indisputable and much wanted assistance to the purposes of private charity. What is every man's business being no man's business, funds bestowed for this purpose are universally and notoriously exposed to depredation. No adequate or comparable security is afforded by the existing order of things. Private trustees render no account but to the Court of Chancery; nor to that, unless called upon by some individual, who, for the chance of obtaining that satisfaction, must begin with dividing between government and the profession a sum sufficient to maintain a multitude of families for a multitude of years: and the account, when obtained, at the end of a certain number of years, and at this expense, exists after all but in manuscript, among the rubbish of an office.—Under the Company, everything of this sort would find its place, of course, in the most diffused of all publications, the *Company's Gazette*.

2. Another and very important assistance is by conveying, to the hands of the poor under its care, a very large mass of the fruits of private charity, which, though destined for the use of the burdensome poor, has, by a strange though scarcely avoidable fatality, been intercepted by the whole body of the rich. Whatever falls in from any casual fund, so much the less comes to be drawn for upon the standing fund: whatever donation, therefore, is meant for the poor in general, and unaccompanied by the designation of the individuals who are to receive it, scarce ever finds its way, and indeed on any other than the proposed plan, *could* scarcely ever find its way, in any case, to the hands for which alone it has been designed. A sum in gross (say £50) is sunk *in toto:* an annual sum, given in annuities amounting to less per head than the necessary expense of pauper maintenance, (suppose 40s.) sinks in the same manner: a sum about equal to that expense (say £5) produces, where there is a poor-house, the difference in point of comfort between home-maintenance and community-maintenance in the poor-house: the pecuniary benefit being shared *in toto* among the body of the rich. If (to suppose the most favourable case, but that a rare one) the amount of the annuity rises as high as to twice the necessary expense of maintenance, (say to £10) then indeed the poor, for whom the whole was designed, *do* profit by it, viz. to the amount of half; the remainder, a tax of £50 per cent. being levied upon the patrimony of the poor, for the use and benefit of the rich. Where, in the view of guarding against this misapplication, the benefaction has been appropriated, by the terms of it, to *poor persons not receiving parish allowance*, the effect of the appropriation has still been rather nominal than real. At the time of his being pitched upon for the benefaction, a man has not as yet become burdensome to the parish; yet, had it not been for the benefaction, he might have become so, perhaps immediately.

Under the proposed system, though scarcely under any other, this grievance is capable of receiving, and may easily receive, an effectual remedy. Every circumstance, by which the condition of an individual can be influenced, being remarked and inventoried, nothing being left to chance, caprice, or unguided discretion, everything being surveyed and set down in dimension, number, weight, and measure, a certain mass of comforts is marked out, under the name of *comforts of course*, as what shall be inseparably annexed to the lot of a pauper, under the Company's mangement, and

Digitized by Google

served out by means of their efficient causes to all individuals without distinction, at the Company's expense. Other articles, which, though of less necessary complexion, are not incompatible with the plans and arrangements of the Company, may in the instance of each individual be added, or not, according as the amount of the expense necessary for the providing of them can be obtained from the voluntary charity of individuals, or from any other of the sources of *extra-comforts*, the list of which will be exhibited in its place. The ground being purposely and carefully prepared for the reception of the superstructure, what comes to be given with the view of its being applied to the use of the poor, and of the poor only, in augmentation of the stock of ordinary and universally-imparted comforts, may thus be certain of being conveyed to its destination, without misdirection or loss.—Borne aloft upon the platform of public charity, what private charity gains thus in power, is like what the dwarf acquired in prospect, when mounted on the giant's shoulders.

In the arrangement of the proposed industry-house plan, special care is taken that each distinct claim to extra comforts, whether on the ground of *special merit, or past prosperity*, or *peculiarly afflictive infirmity*, shall be held up to notice, in the view of receiving, though it were at the Company's expense, the indulgence competent to it. The existing poor-houses know of no such distinctions; they know of no such claims. Everything lies prostrate upon the same dead and dreary level: the virtuous and the vicious, the habitual beggar and the man of fallen fortunes, the healthy and the agonizing—all are confounded together, in the poor-house as in the grave.

The above-promised list of extra-comforts will be of use to private charity—not only by serving to guide the application of voluntary donations, but even by swelling the amount.

Each article of comfort might have its *receiving-box* appropriated to it: the boxes ranged by the side of one another, and over them an assurance, that whatsoever should be put into each should be faithfully and exclusively appropriated to the destined purpose. Along with these *particular* boxes a *general* one, to receive such donations, the application of which shall have been trusted by the donors to the discretion of the government of the house.

Accounts to be regularly published of the produce of each box, and of the application made of it, that the charitably-disposed, before they give in their contributions to any head of comfort, may see what degree of supply the want in question has received, in comparison with the other articles in the list.

To a second glance, at least, the effect of these specifications may not appear so trifling as it may be apt to do to a first. Pity, like other emotions, is never so strong as when called forth and excited by particular impressions. It is the observation of some particular want—some particular instance of distress—that gives birth to that *pain of sympathy*, which can no otherwise obtain relief than by the idea of the cessation of the suffering thus witnessed or imagined. To be assured, that not only the condition of the object will upon the whole be meliorated by what is given, but meliorated in that particular way—meliorated by the removal of that very distress, to the idea of which the pain of commiseration and the consequent desire of affording relief owed its birth—such an assurance is not only the most suitable, but the only perfect satisfaction which that desire can receive.

Even setting aside any particular distresses, which in their intense degrees, a man may have witnessed or imagined on the part of others, those which in an inferior degree he may have experienced in his own person, (an experience which the most opulent are not exempt from occasionally partaking of,) will have a particular tendency to summon the hand of charity to their relief. *Chilliness* will thus suggest to charity the importance of warm *clothing*.—*Good appetite*, or a love of good cheer, will propose additions under the head of *diet*.—An experience of the discomforts of disagreeable society, will produce oblations to the fund for augmenting the number of *peculium huts*, or *out-lying cottages*;—and so on. Charity, in a word, will act with the utmost advantage possible, when thus enabled to address herself to each individual by his particular experiences and sensibilities.*

Even the propensity to censure may thus be productive of useful fruit, and lend its aid to the purposes of benevolence. Be the scheme of provision ever so perfect, it is not in the nature either of man or things, that it should give satisfaction to every individual on every point. To some, it will appear deficient in one article—to others, in another. Of the observation of any defect, a natural consequence is—a wish to see it corrected. Every such wish is, as it were, a handmaid in the train of charity.—The existing system chills in a variety of ways the spirit of benevolence:—under the proposed system, it is kept to work, and preserved in its full vigour.

---

* It is to the power which distress acquires over the sympathetic affections, by presenting itself in a specific shape, that we are indebted to the multitude of specific charities that have started up of late years. Charity for the relief of *ruptured* patients—charity for the education of the *deaf* and *dumb*—*philanthropic societies* for the education and relief of the families of convicts and other malefactors—not to mention *asylums*—*small-pox hospitals*—*venereal hospitals*—*lying-in hospitals*, and *dispensaries*, without number.

Who does not remember the subscription in the hard winter, for the benefit of the *soldiery* serving in *Flanders*? when flannel was bought for jackets, and ladies of quality turned tailors, and, instead of money or flannel, sent in the jackets ready-made.

Digitized by Google

3. Lastly, a very great though indirect assistance will have been given to the fund applicable to the purposes of private charity, by the extirpation of mendicity. The money which is now so much worse than thrown away on beggars, will then be left free to be applied, still under the orders of charity, to purposes of pure and real use.

Book IV. Pauper Comforts.

Section I. *Introduction.*—We now stand upon proud ground. Having elsewhere plucked the mask from the visage of *false charity*, the arch enemy no less of comfort than of industry, let us take up *true charity* and seat her on her throne.

Economy too shall have her day. But her place is but in the second rank. Charity is the *end;* economy but the *means.*

Comforts destined for our pauper-community have already presented themselves as occasion served; comforts not despicable either in weight or number. With a few added articles, let us here bind them up into a wreath —an offering not to be disdained by the altar of Beneficence.

Reader, observe and judge, how little comfort depends on money, and how much on the attention and felicity with which it is bestowed.

Section II. Comforts of Course, *extended to all Classes:—together with the several Points of Management from which, as from their* Efficient Causes, *they may respectively be expected.*

Comforts.	Efficient Causes.
1. Extraordinary security in respect of *health*—the first of all blessings, and without which all others put together are as nothing—better security not only than is to be found in a poor-house under the existing order of things, but than can ordinarily be found within the circle of a private family, even in a high sphere, not to say the highest.	1. *Diet*—Species of it regulated with an express view to health. Goodness of it, in its kind, secured by official examination, checked by right of complaint. Book ii. Ch. iv. vi. and x.—No *fermented liquors.* Book ii. Ch. iv.——No *excesses* of any kind: quantity of food not stimulating enough to invite to excess Irregularities of the impure class excluded by the inspection-architecture, and the *separation and aggregation* principle. Book ii. Ch. ii. and iii. — Ventilation constant, and regulated upon scientific principles. Book ii. Ch. iii.—Temperature regulated with a view to comfort as well as health. Book iii. Ch. xii.—Constant and universal cleanliness. See below.—The state of the whole community, in this respect, incessantly exposed to the view of the whole official establishment, the manager, chaplain, medical curator, &c. as well as of the visiters provided for the inspection of their management.—All causes of disease systematically guarded against. Sickness provided against in the way of prevention as well as cure.—Every attack from disease combated at its commencement.—No unhealthy occupation, no excessive labour, prescribed, or so much as permitted. The healthiest of all employments, *agriculture*, the principal one; but the violence of its exertions tempered by a frequent intermixture of domestic and slight-work employments.—No disorder capable of happening, or at least of continuing, for want of attention, the state of health in every house being regularly reported and made public.
2. Consciousness of a superior probability of long life and health.	2. Premiums to the amount of some thousands a-year annually distributed among the medical curators, &c. of such of the industry-houses (say 10) in which the degree of vitality (all classes included) shall have been highest, and the superiority evidently the result of attention and good conduct bestowed on this part of the management. Book ii. Ch. iv.—Could the idea of a regulation such as this ever present itself to the mind of a pauper, without producing a confidence in the exertions of which it cannot but be productive for his benefit, as well as gratitude towards the fountain from which they flow?
3. Security against want of every kind. 4. Consciousness of security against want.	3. and 4. Peculiar, as compared with the condition of the self-maintaining classes, though not in general, as compared with such of the burdensome

Digitized by Google

COMFORTS.	EFFICIENT CAUSES.
	poor as are maintained in the way of community-maintenance in poor-houses.
5. Constant cleanliness and tidiness.	5. Facility given to the enforcing of regulations to this purpose, by the central position and omnipresence of the official establishment, the result of the inspection-architecture principle. Book ii. Ch. iii.—Interest given to the governor, governess, chaplain, and medical curator, in the enforcing as well as instituting regulations to this effect, by the centrality of their position, and their omnipresence, as before: and by the attention in the plan of management to promote a concourse of visiters. Book ii. Ch. iv. and v.
6. Employment favourable to health and recreation.	6. No unhealthy occupations, no excessive labour, so much as permitted—Employments of different kinds, out-door and in-door, hard work and slight work, sitting work, and moving work, alternating—and operating, with reference to each other, in the way of recreation. Book ii. Ch. iv. and viii.
7. Nights comfortable.	7. Beds separate. Book ii. Ch. vii.*—Temperature regulated, as before—Vermin, of course, extirpated. See No. 2. and 5. *Health and Cleanliness.*
8. Security against annoyance, as from fellow paupers.—See below, under *Apprentices.*	8. Centrality of position, and omnipresence of the official establishment, as before. Appropriate aggregation, as between class and class among the paupers themselves. Book ii. Ch. ii.—Right and facility of complaint. Book ii. Ch. x. (p. 393.)
9. Security against oppression from officers.—See below, under *Apprentices.*	9. Centrality and omnipresence, as before. The officers constantly in the presence of each other—Incapacity on the part of each to exercise any act of oppression without the immediate knowledge of the rest. Right, facility, and publicity of complaint to the public at large—from the institution of the *complaint-books.* Book iv. Ch. x.—Influence of the concourse of travellers and other visiters, and the regular publication of the conduct observed in the management under every head.
10. Entertainment of various kinds, a day in a week.	10. Psalmody and other suitable music. Concourse drawn by the music, physico-theological lectures, and other exhibitions. Book ii. Ch. iv. and xii. Book iii. Ch. xii.
11. A clear conscience, brightened by religious hopes.	11. Seclusion from incentives to sin, and opportunities of sinning—the result of the sobriety of the regimen, the omnipresence of the rulers, and the aggregation and mixture of the guardian classes of the paupers themselves with the susceptible classes.—Uninterrupted benefit of divine service.† See below, Section ii.
12. Occasional faculty of visiting and being visited by friends and relatives wheresoever situated, and howsoever dispersed.	12. Consolidation of the burden of maintenance, and assessment of it on one fund:—thence the local situation of the pauper a matter of indifference in point of interest to those on whom the nomination of his place of residence depends. Book i. Sect. i. ii.—System of cheap conveyance attached to each industry-house. Book iii. Ch. vii.—Equality of distance between industry-house and industry-house. Book. ii. Ch. iii.—Disposition to indulgence, in relation to this comfort, maintained by a clause in the director's oath of office. Book i. Sect. xi.

* Not two, three, or even four, jammed together in the same bed, as in some of the existing poor-houses, in a manner equally repugnant to comfort and decency

† "Blessed are the poor," says the gospel, "for theirs is the kingdom of heaven."—Of all descriptions of the poor, surely none that would possess a more promising claim to the benefit of this beatitude.

Digitized by Google

COMFORTS.	EFFICIENT CAUSES.
13. Prospect of melioration of fare.	13. Prospect of success from the undertakings for catching and curing fish, from the maritime industry-houses. Book ii. Ch. vi. (p. 388.) Meat in additional quantity, in the event of a certain degree of profit resulting from the agricultural labour of the pauper population of the house.
14. Tranquillity—the result of security against that deterioration of condition, which, in the existing order of things, is liable to take place in all manner of ways and degrees, in consequence of changes in the parochial government.	14. Unity and permanence of the body possessing the government in chief.—Determinateness, fixity, and consistency of the fundamental principles of management. Book vi. Ch. i. ii.—In this subordinate community, steadiness of management will be what security for property is in the community at large.*
15. To those who have remains of property, preservation of the use of that property in kind, where the nature of it allows of its admission into the poor-house.	15. Establishment of the all-employing principle, and principle of sobriety.—Hence no fear that persons possessed of property will come to the Company to be maintained in idleness, as they would be apt to do, spending their property in strong liquors, if the opposite rule were not established in the existing poor-houses.†

Section III. APPROPRIATE COMFORTS; *extended by special Care to Classes ordinarily bereft of them.*

I. *Feeble hands, incapable of self-conveyance.*

COMFORTS.	EFFICIENT CAUSES.
1. Faculty of partaking of the benefits of divine service.	1. Centrality of the chapel part—thence the paupers, in the several divisions all round, within sight and hearing of the minister without quitting their seats. Book ii. Ch. iii.‡
2. Opportunities of air and exercise.	2. Faculty of being stationed for the purpose

* The perpetual revolutions to which the affairs of the pauper-community are subject, in the existing order of things, are not among the least distressing features of it. Change of persons, incessant, periodical, annual:—change of plans, and measures, frequent—from the working system, to the no-employment system—from the small establishment, or workhouse system, to the large establishment, or industry-house system—from the uninterested-management system, to the interested-management, or farming system, and (unless in the few places where the industry-house system is established) back again, with alterations continually liable to be repeated. In these obscure and partial, but always disastrous revolutions, every change brings suffering in its train: changes for the worse, immediately; even changes for the better, remotely; the deterioration, that sooner or later never fails to succeed it, being rendered in the latter case the more bitter, by the contrast it makes with the less uncomfortable state that went before it.

One revolution the proposed system (it must be confessed) supposes and proposes, and this too an universal one. But it is meant at least to be, and (may I not add) holds out a tolerably promising prospect of proving, a *final* one: and it ensures the community against annual, besides contingent ones.

† Nothing is in fact lost by this indulgence: since the Company, were they to claim the money, would never reap any advantage from their claim. A man who, when the distress for subsistence came upon him, had property, such as a cottage, or its furniture, or both, would sell it and spend the money, before he came into the house. If his property came to him after his betaking himself to the house, he would go out, and live upon the money till it was gone.

Past-prosperity hands will frequently be in possession of some little article or two, of ancient, perhaps family property, the saleable value of which, bears no proportion to the value set upon it by the proprietor; were it confiscated and sold, the difference between the saleable value and this relative value, this *value of affection*, would be so much lost. As far as room could be spared, it should be among the standing orders, to afford to a pauper of this class houseroom for such articles. A person of this description would naturally be indulged with the use of a *peculium* abode of some sort or other. In that case there would be a quantity of room, such as in the common apartments could not be spared.

Where property thus reserved as a peculium happens to be in the shape of income, (the rent for example of a cottage,) there will be some who would wish to live upon it for a proportionable part of the year, in the circle of their friends. This indulgence might likewise be afforded.—See farther on, *Extra-comforts.*

‡ To those who, regarding the salvation of souls as an object, regard the habit of devotion as a means, this single advantage, unenjoyed under the existing community-provision system, uncommunicable to the house-provision system, or to the self-maintaining poor, not to mention the rich, should seem enough to command their approbation and assistance.

A regulation one meets with in poor-houses having chapels within themselves is, that all that are well enough to quit their rooms shall pay attendance on divine service:—the benefit being thus sought to be imparted to all—except those whose case stands most in need of it, and among whom are likely to be found those who are most desirous of it.

Digitized by Google

COMFORTS.	EFFICIENT CAUSES.
	of superintendence in the moveable watch-houses, adding at night to the number of *peculium* abodes. Book ii. Ch. iii. —Opportunities of being sent on errands to the circumjacent parishes, or industry-houses, by means of the system of cheap conveyance. Book iii. Ch. vii.—Means of air and exercise, even in rainy weather, in the corridor. Book ii. Ch. iii.
3. Opportunities of constant occupation, suited to their remaining faculties.	3. Largeness of the scale of management, thence faculty of finding suitable employment for every remnant of ability, however circumstanced. Book ii. Ch. iv. Book vi. Ch. i.

II. *Infirm and sick persons labouring under cases of peculiar difficulty.*

COMFORTS.	EFFICIENT CAUSES.
4. Superior chance of medical relief.	4. Publicity of the management in a *medical* as well as all other points of view—hence the attention and beneficence for which the medical faculty are so peculiarly conspicuous, attracted to all such cases. Book iii. Ch. xii.* (p. 427.)

III. *and* IV. *Persons deaf and dumb.—Persons born blind, or stricken with blindness while unmarried.*

COMFORTS.	EFFICIENT CAUSES.
5. Facility in regard to obtaining the comforts of matrimony.	5. Advantages of being educated or associated with persons of the opposite sex, partakers of the same infirmity. Book ii. Ch. xi.—A value, scarce yielding to that of ordinary labour, being moreover given to the labour of persons thus circumstanced, the difficulties which stand in the way of matrimonial union among persons thus circumstanced, especially in the case of the poor, whether charity-fed, or of self-maintaining families, are thus removed.

Section IV. EXTRA COMFORTS:—*to be imparted to more or fewer, according to Claims, Means, and Opportunities.*

1. Peculium habitations—occupiable at all hours but working hours: *viz.* infirmary huts, when not occupied as such. Book ii. Ch. iii. —2. Moveable inspection-houses, or field watch-houses—when not occupied as such.—3. Out-lying cottages. Book ii. Ch. iii.—4. Peculium garden-plots:—with or without the use of the huts or cottages.—5. Power of choosing a partner for the peculium habitations or garden-plots.†—6. Faculty of being chosen as a fellow-occupant of a peculium habitation or garden-plot.—7. Extra allowance in the way of clothing.—8. Bedding.—9. Diet.—10. Pocket-money.—11. Holiday times, in the manner of school-holidays, for a temporary residence in the circle of a man's friends.

The number of out-lying cottages may come to be extended—and that to an indefinite amount—by a demand created by persons able and willing to pay an adequate rent. The industry-house management affording on the one hand employment to hands of all descriptions—to many, who through one accident or another, could no longer get employment, or at least adequate employment, at their respective homes—and, on the other hand, affording maintenance cheaper than it can be obtained in a private cottage, many persons so circumstanced would be disposed to settle under the wing of the Company, could they enjoy the privileges of a separate abode.—So, of two near relations, one of them incapable, the other capable of self-maintenance out of the house; the self-maintaining one, rather than part company, might be happy to accom-

* Cases of peculiar difficulty are apt to be cases of peculiar affliction. To obtain a consultation of three or four physicians, is regarded as no small effort among the most opulent. Among *our* poor, cases of this description will naturally enjoy the benefit of a sort of general consultation, calling forth the united powers of the whole faculty.

† Making the habitations to hold two persons, doubles the quantity of accommodation, with little or no addition to the expense. Taking one of the two for the principal person, and giving him the choice of his fellow-inmate, doubles the value of the habitation, besides the power it confers: an article capable of constituting a valuable *item* in the catalogue of rewards: naming each without consideration of the other, would be little less than destructive of that value.—An aged married couple—a pair of sisters—an aunt and niece—might thus find the principal comforts of home-maintenance, transplanted for their benefit into the Company's demesnes.

The benefit of all this mass of comfort will far outstretch the expense. Hope will multiply it. Each possession in hand will draw a numerous knot of expectancies in its train.

Digitized by Google

pany the other to an industry-house, where the faculty of self-maintenance, coupled with the comforts of a common residence, separate from that of the multitude, might still be enjoyed by both. Taking ten per cent. in the way of rent for capital thus invested—taking 20s. a-year, for instance, for a cottage that cost £10—the Company would, in little more than ten years, have reimbursed itself for the expense: at that period it could very well afford to add one out of every two of these rented cottages to the list of *peculium* habitations allowed rent-free. The place of *out-houses* being supplied by the industry-house itself, ten pounds would be sufficient for a cottage capable of lodging two persons without inconvenience. (See Book ii. Ch. iii.) This is according to the London prices. But where brick and lime were to be had upon the spot, or at no greater distance than that of one of the immediately circumjacent industry-houses, and by means of a competent portion of the apprentice strength of each house, bricklayers and other building hands come to be had for 3d. or 4d. a-day, it may be conceived to what an expanse this capital source of pauper-comforts may easily be extended. Is not this rather more eligible than the all-devouring and everlastingly-increasing and encroaching system of pensioned idleness, in a private cottage?

By original property—by savings—by donations, or by earnings while in the house, a man might, after the extinction of his capacity of self-maintenance, possess an income sufficient to maintain him out of the house for a part of the year—for so many weeks or for so many months—though not for the whole of it. Property being preserved to him, as above, a correspondent portion of the summer, which (besides being the pleasantest time, and the best adapted for travelling) is the least expensive, might thus be enjoyed by him in the bosom of his family: the winter part, which is the most expensive, being the part spent by preference in the industry-house.

Section V. *Funds and Grounds of Title in regard to Extra-comforts.*

Funds for the Expense of Extra-comforts.	*Correspondent Grounds, or efficient Causes of Title.*
1. Remains of property.	1. Legal title, confirmed by the indulgence of the Company.
2. Money earnt by this or that individual in the way of encouragement-money, in the nature of a per centage on the value of work done for the Company.	2. Legal title, created by the allowance of the Company.
3. Poor's share in forfeitures, as by the existing law.	*Grounds of title, or claims to the funds* 3, 4, *5, and* 6.
4. Existing foundations, and other benefactions for the benefit of parish poor.	*a. Past prosperity:*—especially if accompanied with, *b. Decayed gentility.* *c.* Infirmity particularly severe. *d.* Extraordinary age. *e.* Exemplary character before admission. *f.* Exemplary conduct since admission. *g.* Seniority—claims grounded as above being satisfied, and the general fund not exhausted.†
5. Benefactions by visiters admitted on Sundays and other celebrities.* Book ii. Ch. iv. Book iii. Ch. xii. xiii.	
6. Extra-establishment, instituted by the Company, at its own expense.	

* Necessary admission price very low, that the number admitted may be the greater; but increasable, of course, at the pleasure of the guest.

† All these grounds of claim agree in this, *viz.* in reducing the number of the claimants, and thereby the expense. Elsewhere, gratuitous bounty would operate, and does operate, and with irremediable efficacy, in relaxation of industry: persons whose cases proved thus distinguished not being excepted. *Here*, no such consequence can ensue. Work, such as a man's faculties are equal to and suitable to, being secured by the regimen of the house:—by the application of the *all-employing* and *earnt-first* principles. Book. ii. Ch. iv.

In the cases of *past prosperity* and *decayed gentility*, (the latter an aggravated modification of the former,) the demand for extra-allowance is the greater, inasmuch as money, or money's worth, bestowed to equal amount on this class as on another, would not be productive of equal comfort: *opinion* having here joined with *habit*, in adding to the mass of wants created by *nature*.

In the case of *infirmity particularly severe*, the demand stands upon a similar, and commonly a still higher footing: the mass of comfort being more depressed by the infirmity, than, generally speaking, it is even in the power of charity to raise it.

Extraordinary age, besides a title similar in kind, though inferior in degree, to what exists in the two preceding cases, possesses this recommendation, that, being independent of human will, it is not capable of being either counterfeited or fabricated, either by study or neglect.

In the case of *exemplary conduct*, whether *before* or *after* admission, the operation of the bounty is better than simply innocent: without doors, as well as in the house, its direct tendency is, to increase the stock of virtue. But to obviate injustice, and the imputation of injustice, and that the quality promoted may not be idleness in the name of virtue, the description of the efficient cause of title in this case should not float in the air, if possible, but ground itself in some specific act or habit: examples of which may be found in the transactions of some of the societies expressly formed for this amongst other laudable purposes.

Where *seniority* is the leading ground, goodness of character should to a certain degree be combined with it. In the instance of a man who stood first in point of age, anything particularly objectionable in his character might be admitted as a ground for

Digitized by Google

Funds for the Expense of Extra-comforts.	*Correspondent Grounds, or efficient Causes of Title.*
7. Foundation in favour of this or that class of paupers, by private benefactors. Book iii. Ch. xiii.	7. Donation, confirmed by the allowance of the Company.
8. Private bounty bestowed on this or that individual, in the way of foundation, or casual donation, by an individual friend.*	8. Ditto.

Necessaries, together with the stock of *comforts of course*, ingrafted on them, as it were, by the system of management, being afforded as above, to all without distinction, and provision made for the specific claims just now enumerated, these extra-comforts, and whatever else is beyond necessaries—everything that comes under the head of *superfluity* and *luxury*—however innocent, and how much soever the utmost possible extension of such benefits be to be wished—may be left, it should seem, not only with strict propriety, but with very tolerable security, to rest upon no firmer nor broader basis than that of contingent and spontaneous beneficence. Every indulgence a man is witness to, will either in possession or prospect be his own: and when the difference between prospect and possession is the only difference, inequality, though it were much greater than here, can scarcely be looked upon as a grievance. The real grievance would be, if here, as in other countries, existence itself were to be left to the choice of others, and to chance.

Section VI. *Company's Apprentices—their Condition in Point of Comfort.* The comforts *of course*, which the apprentice class will possess in common with the rest of the population, but to the value of which they cannot, for the want of experience, be expected to be in every instance equally sensible, may be passed over almost without notice.—Of this kind are, 1. Security in point of health. 2. Consciousness of superior probability of long life and health. 3 and 4. Security against want of every kind, and consciousness of that security. 5. Constant cleanliness and tidiness. 6. System of employment favourable to health and recreation. 7. Nights rendered comfortable by separation and cleanliness. 8. Security against annoyance and oppression from fellow-paupers, and especially from fellow-apprentices. 9. Security against oppression from officers.† 10. Sunday enter-

his losing his claim to the species of promotion in question, either altogether, or for a certain number of turns: or even without any specific assignable objection, a man might be set aside in favour of another, who, being in point of character decidedly superior, should happen to stand next in age.

It might operate as an additional security for quiet and respectful behaviour on the part of the paupers towards the officers, individually considered as well as collectively, if a recommendation from an officer (the privilege to be shared by turns) were to be received as a ground of appointment, to such lots of extra-comfort as remained unoccupied by the prior titles above-mentioned.

* The separate possession of one of the outlying cottages, with or without the addition of other articles in the list of *extra-comforts*, would, when *mounted*, as it were, upon the ordinary plan of maintenance, form a comfortable provision for a man to make for a superannuated servant, or other dependant, in a similar line of life. Many a master and mistress would at once be able and glad to do thus much, who, now that there is no other alternative than between the leaving a servant to share in the undistinguishing provision of a common poor-house, and giving him a complete maintenance, does nothing.

† In regard to all these particulars, the lot of the Company's apprentices will show to advantage, not only when compared to the lot of a pauper youth under the existing order of things, but when compared to the lot of a youth of the same age among the superior classes.

In a school, private or public, the quantity as well as species of correction administered, depends—not upon the real demand for correction, but upon the habits and temper of the master and his subordinates. Even in a private family, the mildness or harshness, reasonableness or unreasonableness, steadiness or unsteadiness, of the treatment given to the child, depends in every point on the temper and humour of the parents, or those who stand in the place of parents; on whose part every degree of caprice and tyranny, so long as it keeps clear of injuries threatening danger to life and limb, may vent itself without control. And as to what depends upon the conduct of the youths themselves towards one another, that is, of the stronger towards the weaker, even those great schools which bear the name of *public schools*, are known, perhaps without exception, to enclose an enormous and never-ceasing mass of unobserved and undivulged oppression: one of the first lessons practised in these seminaries being that of enduring tyranny—one of the last, that of inflicting it;—both together conspiring to instil into the susceptible mind an insensibility and indifference to justice. *Here* no instance of any act of authority, or exercise of coercion, on the part of anybody towards anybody, but what will be immediately and universally known;—therefore, humanly speaking, no possibility of abuse.

As to punishments, no act of that kind but will be entered, of course, in the book called the *Punishment-book*, (see Book ii. Ch. x. *Book-keeping*,) and by that means forwarded to the cognizance of the General Board. On comparing the books of the several industry-houses, observation will be made which exhibits the greatest number of instances of punishment, which the least. Compare then the state of these two industry-houses in other respects: observe which upon the whole exhibits the fairest picture. If, in that which has afforded the least punishment, the result should happen to be fairer than in that which has afforded the most punishment, this circumstance alone, without further inquiry, would afford a strong ground for suspicion, that in this abundance of punishment there has been more or less that might have been spared.

I speak of punishment, because punishment is, in the existing order of things, a thing of course. Here, however, how can punishment gain admittance?—

Digitized by Google

tainments suitable to the day. 11. The comfort of a clear conscience, brightened by religious hopes, the result of remoteness from temptation. 12. Prospect of melioration of fare. 13. Tranquillity as against the apprehension of change.*

Of the several articles classed under the head of *extra comforts*, (unless perhaps it be such an article as that of a *peculium* garden-plot,) scarce any account need be taken in the case of the present class; partly because they cannot be afforded; partly because, through want of contrary experiences, they would be little relished; partly because, for the same reason, they would be not at all desired.

The comforts of which a distinct mention will be made under this head, accompanied with an indication of their respective efficient causes, as discoverable in the plan of management, are such the value of which, to render it particularly apparent, requires a comparison to be made under the same heads between the condition of these children of the Company, and that of their fellows in age, whether in their own, or in ever so much higher ranks of life.

COMFORTS.	EFFICIENT CAUSES.
1. *Diet.*—No deficiency—no want of the means of health and strength at the ages most apt to be stinted in the economy of the self-maintaining poor: *viz.* all the ages prior to the self-maintaining age.	1. That part of the system of management, which proposes that the allotments made of quantity according to age, should lean to the safe, that is, to the superabundant side; and that which proposes that allotments differing from one another in quantity, shall be made to different assemblages of children of the same age, for the purpose of ascertaining by experiment the most advantageous quantity for each age. Book ii. Ch. vi.
2. No sense of privation: none of the pains attendant on the emotions of regret, discontent, and envy, on that score.	2. Inexperience and ignorance of any fare more palatable than what they possess—the result of that part of the plan of management which prescribes the separation of the apprentice-stock, especially the *indigenous*, and *quasi-indigenous* branches of it, from the world at large. Book ii. Ch. ii.
3. Recreation in the way of bathing (to both sexes.) 4. Security against danger of drowning—by practice and instruction in the art of swimming.	3 and 4. Bath proposed to be made, if possible, in the land attached to each industry house—secluded from the access of strangers; and, by being allotted to the different sexes at different times, and by the constant presence of guardian elders of the same sex, clear of objection on the score of decency.† Book ii. Ch. ii. iii. xii. Book iii. Ch. x.

for from what occasion can it arise? No cessation of inspection, no transgression;—no transgression, no punishment.

If security against everything that savours of tyranny be liberty, liberty, in the instance of this hitherto luckless class of human beings, can scarcely ever have yet existed in anything near so perfect a shape.

But liberty, in a favourite sense of it, means *lawless power:* in this sense, it must be confessed, there will not only be little liberty, but in plain truth there will be none.

* In the instance of St James's, Westminster, a pattern of such good management as is compatible with the existing order of things, observe the expense of boarding the pauper children of the metropolis in the circumjacent villages; 3s. 3d. a-week, besides contingencies. What does all this expense terminate in?—what, in the account that has been published by the institutors of this management, is very justly termed "a dreadful period:"—"The time when these children were to be brought home (six or seven years of age) was a dreadful period to the children, and to the feeling mind."—[ANNALS, xxviii. 167.]—The Company's children have no such period. With them it is all country:—no transition from rural liberty to town confinement.

† Swimming is to most young people a most delightful as well as healthful exercise: whenever it is in their power, they are in general ready enough to avail themselves of it. But for the most part they are debarred from it:—in many instances by the want of water;—in other instances by the anxiety of parents on the score of danger;—in others, by the repugnance of the elder part of the community at large, on the score of decency.

Females are, by the latter consideration, universally debarred from it;—unless it be in very few instances indeed, among the most opulent classes, in which the inducements happen to be strong enough to counterbalance the expense of a retired or covered bath, with suitable attendance.

Removed to a sufficient distance from the house, and secluded from view by proper fences, one bath, used at different times might serve for both the sexes.

The advantage of bathing, with comfort and convenience, is among the attractions that draw the higher classes to what are called the *watering-places;* and such is the activity of charity in this country, that it has even found out a means of displaying itself by facilitating the access to these places in favour of the inferior classes. Against particular diseases, fresh-water bathing is not, it is true, looked upon as standing upon a par with sea bathing; yet even against diseases—to say nothing of general health and strength,—fresh-bathing is not altogether without its use.

The existing charity gives sea-bathing to a few score perhaps in a year; the proposed charity gives fresh-water bathing to some hundreds of thousands of the pauper-community all the year round; and

Digitized by Google

COMFORTS.	EFFICIENT CAUSES.
5. Exemption from intellectual exertions of the most painful kind.	5. Exemption from the obligation of learning languages (especially dead languages) by grammatical rules.
6. Comforts of matrimony allowed at the earliest period compatible with health.*	6. Removal of all difficulties and uncertainties with regard to subsistence:—the result of the frugality of the plan of maintenance, coupled with the certainty of giving to the labour of each

for the benefit of the self-maintaining poor all round, every one of the two hundred and fifty industry-houses may be a *watering-place*.

* The maximum of clear happiness is the object, and the sole object, of every rational plan of conduct, public or private.

In this line, as in every other—concomitant and consequent inconveniences out of the question—the maximum of enjoyment gives the maximum of clear happiness. But the longer the *duration* of any source of enjoyment, nothing being lost in other respects, the greater the *sum* of enjoyment: and the duration is the longer, nothing being lost in other respects, the *earlier* the commencement.

Pecuniary difficulties being removed (as they are here) the inconveniences to be considered and guarded against are—1. *Physical*—the danger to health and strength from a too early indulgence, of which, amongst other ill consequences, premature termination might be one:—2. *Moral*—such, if any, as may be to be apprehended from the entering into a state of power, as well as independence, before the intellectual faculties have attained a growth commensurate to that state. Whatever may be the period suggested by a due consideration of the delay necessary to the avoidance of these inconveniences, thus much will not be liable to dispute—viz. that every portion of time, which, without incurring them, might have been passed in the social state, and yet is suffered to pass away in celibacy, is so much lost to happiness.

In the world at large, what may be the average amount of this loss, in the instance of the class in question, is one of the many interesting objects observable in the political line, of which no account, and scarcely so much as any notice, hath as yet been taken. A great comfort is—that owing to causes sufficiently obvious, and which are not to the present purpose—this loss is not quite so high in this lowest and most numerous, as in the higher classes. Yet, even in this class, and in this country, the number of years thus lost, must, upon any calculation, or rather without any calculation, leave a blank much to be regretted in the book of life.

In the proposed order of things, among *our* apprentices—there need be no such loss at all. Regard to health—this one prudential consideration, and this alone, will, in this privileged situation, draw the line. In private life, considerations of the intellectual and moral kind conspire to keep back the period of social happiness. Faculties, moral as well as intellectual, must be ripe for the business of government:—the business not of self-government only, but of family-government. At one-and-twenty, a youth will be allowed to be, in general, alike fit for self-government and for the government of the little family empire: and, whether married or single, it is at this age, and not before, according to the proposed plan, as under the existing order of things, that the management of his conduct will be in his own hands.

In regard to health, at what precise point the line shall be drawn, will be matter of consideration.—It being a point not capable of being determined otherwise than by experiment, it ought to be—it must be—committed to experiment. Nature shows the commencement of the ability—nature shows the commencement of the desire.—How long must the ability continue useless? How long must the desire be a source of vexation, instead of enjoyment?—Questions, surely, not uninteresting—surely, not undeserving of solution!—To give the solution, I see but one course:—to take the visible commencement of physical maturity in each individual for the standard and basis of experiment: from this starting-post to mark out periods of delay—three months—six months—nine months—and so on, for a small—it surely need not be a large—number of years—twenty-one in the male might be the utmost. From thenceforward observe the condition of the classes—see whether there be any and what perceptible differences in point of health and strength, as between class and class.

Fiat lux, were the words of the Almighty:—*Fiat experimentum*, were the words of the brightest genius he ever made. O chemists!—much have your crucibles shown us of dead matter;—but our industry-house is a crucible for men!

"The Chinese (says Sir George Staunton, vol. ii. p. 194, 8vo.) are, perhaps, upon an average, better able to support moderate labour, with little intermission, than many of the lower classes in Europe. They are bred in better and sounder habits, and continue longer under the direction of their parents. They are for the most part sober: they marry early: they are less exposed to the temptations of debauchery: they are less liable to contract diseases which corrupt the springs of life: their lives are more regular and uniform."

And, in another place, (vol. ii. p. 385,) "The marriages in China are, in fact, observed to be prolific, as well as early."

In France,—when France was France,—among the first families in the nation, and in others, as far as economy was supposed to permit, regard to health as well as happiness fixed for the period of matrimonial union the earliest age to which health, regarded in another point of view, was supposed to give a permit for that purpose. Sixteen scarce an early one;—fourteen not an uncommon one. What, under the French monarchy, was the best privilege of the Prince, is in our Utopia the universal lot of the whole community. And to what would they be indebted for this gentlest of all revolutions?—To what, but to economy? Which dreads no longer the multiplication of man, now that she has shown by what secure and unperishable means infant man, a drug at present so much worse than worthless, may be endowed with an indubitable and universal value.

Turn now to the palace, and behold what a fund it affords for pity, when confronted with our industry-house. Princes unmatched, or late matched, or unprosperously matched, or incongruously matched.—Princesses—five remaining—all ripe, but all too high, for happiness.

Digitized by Google

COMFORTS.	EFFICIENT CAUSES.
	individual a value secured against depreciation and want of employ, by the principle of self-supply, with a sufficient stock of land for it to operate upon. Book i. Section 6. Book ii. Ch. iii. iv. Book v. Ch. ii. Continuance of the married apprentices under equal subjection before as after marriage, until the age of emancipation—thence removal of the difficulties attendant on self-government at that early period. Right possessed by the non-adult parents of having their children taken care of in the same way they themselves had been, and at the same time in the same house, and under their own eyes.
7. Ulterior prospects—chance of rising to superior stations, by the cultivation of any natural talents that may happen to display themselves—hence hope and emulation.	7. Universal publicity of the conduct of the whole system.—General concourse of strangers expected to each house.—On the part of the officers and their subordinates, opportunities easy, perpetual, and universal, of remarking anything extraordinary that may present itself in the way of natural talent on the part of the apprentices. Appropriate culture of extraordinary talents, should it be thought advisable: and even a system of experiment, for the purpose of bringing latent talents and capacities into light. Book iii. Ch. xii.

Comforts, or other Advantages, applying exclusively to the Female Part of the Apprentice Stock.	*Efficient Causes of the several Advantages.*
1. Security against seduction, and its attendant miseries.—Opportunities of conversation with the other sex, as in well-regulated families, in a safe manner, and at safe times: the degree of safety even superior to anything which commonly is, or easily can be, afforded in the best regulated, and even the highest families.	1. Uninterrupted presence of the governess and her subordinates; also of guardian elders of the proper sex—as before.
2. Preparation for the married state. Instruction and experience in the duties of the housemaid, the kitchen-maid, the nursery-maid, and the sick-nurse, by alternate employment in the performance of the family business of the house, and in attendance on the infant part of the society, and on the sick. Lessons of economy in every branch of domestic management — cooking — warming — lighting — clothing, &c., drawn from the most approved sources of instruction—digested into general rules—and illustrated and inculcated by practice.*	2 Proposed regulations of the house. Manner in which the population of the house is composed—comprising a numerous stock of infants, as well as of the sick and infirm of all descriptions.

This important point duly attended to and provided for (as it easily might, and, after warning such as this, and suitable regulations deduced from it, naturally would be) an inspection industry-house would add to its list of collateral uses that of serving as a *school of domestic economy* for the use of all classes, but more especially for that of the self-maintaining poor.

Works are already in existence, among which Count Rumford's Essays relative to the Poor, are entitled to a distinguished place, in which these principles have been carried to a state very little, if anything, short of perfection, in relation to some of the most important points:—works, and, what is more, practice according to these works,† and these, in exhibiting the

* Partly for want of subjects to practise upon—in some measure, perhaps, from the want of the species of forecast here insisted on—in some very expensive retreats that have been prepared by private munificence for female innocence, the condition of these nurselings, in point of suitable acquirements, at the period of their emersion into the world at large, has been observed (I have been assured) to exhibit but an indifferent result. Pampered, unexercised, and uninstructed in the arts assorted to their subsequent destinations and resources, they make (it is said) but indifferent servants, nurses, or mothers.—A female course of education—a female apprenticeship, excluding from its exercises the characteristic and appropriate functions of the sex, must be a sad education—a sad apprenticeship indeed!

† See Reports of the Society for bettering the Condition of the Poor.

Digitized by Google

improvements that have been devised, show how great the room for improvement is under the current practice.

Compare now the lot of the Company's apprentices with that of any other class of the same age, the very highest not excepted—survey it in its whole extent—probe it to the bottom—and judge whether they are so much to be pitied as to be envied.

Against pains of all sorts, better security than is to be found in any existing situation, without exception.

Desires not crossed, but prevented:—obstacles not moral, but physical;—not terror, but ignorance.

Among enjoyments, the coarser, though more indispensable—(those which attend the satisfaction of the appetites of hunger and thirst)—purified—I mean from pains: the more exquisite—(for I speak of nothing that is not common to the species—nothing that is the peculiar fruit of extra culture in particular minds being to the purpose here:)—the more exquisite, not only in like manner purified, but accelerated:—increased at the earliest and best stage,—at the stage at which their intensity is at the highest:—increased in the only way in which the mass of them is susceptible of being increased.

In the article of diet, no unsatisfied longings, no repinings:—nothing within knowledge that is not within reach.—That he who has been habituated to poignancy and variety of diet, suffers on being reduced to simple and insipid fare, is not to be doubted; but that the enjoyment of him who has never known any sort but one, though it were the most insipid sort, does not yield in anything to that of the most luxurious feeder, seems equally out of doubt:—in this way all the efforts of art are but a vain struggle to pass the limits set to enjoyment by the hand of nature.

*** In the original there is an intimation that the communications are "to be continued;" but though the matter of Books v. and vi. is unsupplied, there are no farther papers on the subject in the Annals of Agriculture by the author. The last of this unfinished series, containing Section 6 of Book iv., as above, is in vol. xxxi. of the Annals, p. 273 to 288.—*Ed.*

Digitized by Google

OBSERVATIONS ON THE POOR BILL,

INTRODUCED BY THE

RIGHT HONOURABLE WILLIAM PITT

(WRITTEN, FEBRUARY, 1797.)

NOTE BY THE EDITOR OF AN EDITION PRINTED FOR PRIVATE CIRCULATION IN 1838.

THE "Observations" were written forty years ago, and were recently found amongst Mr Bentham's manuscripts. They have never been printed; but from some correspondence it appears that he was in communication with some of the influential members of the Legislature, and that the "Observations" powerfully contributed to the abandonment of the measure in question.

The provisions of the Bill, as compared with the principles set forth in the "Observations," may be adduced as a specimen of empiric as compared with scientific legislation. To those who may be masters of the principles of the New Poor Law it will be manifest that, had the measures embodied in Mr Pitt's Bill been brought into general operation for any length of time, the effects would have been more disastrous to property, and, through property, to the ultimate welfare of the labouring classes, than the most disastrous revolution in modern times. The New Poor Law is, perhaps, the first piece of legislation based upon scientific or economical principles; the main principle for the administration of the law being, however, a principle which neither Mr Ricardo nor Mr Malthus had seen when they gave the weight of their opinions against the institution of a legal provision for the compulsory relief of the poor. The preparation of the new measure by laborious inductions from a large mass of facts specially examined may be recommended for imitation where safe legislation is required for large subjects.

To those who are unacquainted with Mr Bentham's works, as the greater number even of his professed followers undoubtedly are, (since the best refutation of some of their favourite doctrines are to be found in his writings,) the "Observations" will furnish a fair specimen of his mode of treating such subjects. Another of numerous instances of his great perspicuity for practical purposes is to be found in his plan of frugality banks, published during the year 1798. [See above, p. 409.] In this plan will be found the anticipation of the improvements which some years of trial have suggested in the institution of savings' banks, particularly the addition of the provisions for annuities to the labouring classes, made by the act of 3 Will. IV. c. 14.

7th May 1838.

CHAPTER I.

INTRODUCTION.*

THOUGH no determinate system of arrangement presents itself as having been adopted for the purpose of this Bill, or at least as having been steadily pursued throughout the course of it, the whole matter of it at least may be conceived as distributable under *four*

---

* Before I engage in the discussion of particular clauses, I find it indispensably necessary to state an apprehension I have throughout been labouring under; the apprehension of doing an unintentional injustice to the Bill by mis-stating from time to time the intended import of it. The truth is, the degree of difficulty I have experienced in the course of my endeavours to comprehend that import, has

Digitized by Google

heads or compartments: *one* part taking up the *out-allowance* or *home-provision* system, and opening new sources of relief in that shape; a *second*, taking up the *home-provision* system and the *small** *establishment* system jointly and in a system of working places under the names of *Schools of Industry*, establishing throughout the southern division of the united kingdoms a system of employment and industrial education, of which the scene is to *shift* in a manner between the public *school*-room and the private *home;* a *third* occupied in establishing a system of *superintendence* to watch over the management of these schools of industry; and the *fourth* taken up with a set of regulations in the way of *procedure* and a few other arrangements of a *technical* nature, such as it is commonly deemed necessary to tack to the end of statutes creative of new powers to be exercised by particular authorities.

On looking into the portion of matter relative to the subject of *home provision*, we shall find it distinguishable into two main divisions: the one occupied in the distribution of *occasional* or *temporary* allowances; the other in giving commencement or security to a system of what may be termed *superannuation annuities*, humanely destined to diffuse a gleam of comfort over the evening of life.

On looking into the amendments applied by the *Bill* to the plan of relief afforded by the *home-provision* system in the *present* state of the law, we shall find them introductive of the following *extensions:*

In Section 2, a *supplement* is meant to be provided for whatever deficiency, in point of *earnings*, may result from any deficiency in point of *ability* with reference to work. This clause I shall take the liberty of distinguishing by the name of the *under-ability*, or *supplemental-wages* clause.

In Section 1, another supplement for whatever deficiency, in respect to the means of maintenance, may be produced in families by an *overcharge* of helpless *children*. This may be termed the *family-relief*, or *extra-children* clause.

In Section 3, power is given (to whom not mentioned) to administer relief in the shape of *capital*, to be employed in the purchase of "a cow, or *other animal yielding profit*." This may be termed the *cow-money* clause.

In Section 4, a provision is made that property, "visible property," though it amount to £30, or perhaps more, shall not operate in *exclusion of relief*. This may be termed the *relief-extension*, or *opulence-relief* clause.

And in Section 23, provision is made for conferring on the scholars of these schools, in certain cases, the benefit of *apprenticeship* at the public expense. This I shall term the *apprenticeship* clause.

I shall now consider the several clauses in the order in which they have just been brought to view.†

CHAPTER II.

1. *Under-Ability, or Supplemental-Wages Clause.*

"LIV. And be it further enacted, That if any poor person residing in any parish under the authority of this Act, and not being able to earn the full rate or wages usually given in such parish, or the parish or parishes united therewith, shall, with the previous consent of the person or persons appointed to the management of the poor of any such parish or united parishes, contract and agree to work at any inferior rate or wages, which wages shall not be sufficient for the maintenance and support of such poor person singly, or in conjunction with his or her family, it shall and may be lawful for such officers of the poor, with the approbation of one or more justice or justices of the peace in the district, to make up such deficiency as may be necessary for the support of such poor person, and his or her family, (regard being had to the earnings of such family,) out of the rates made for the relief of the poor, without compelling such poor person to be employed in any school of industry, or in any other manner under the authority of this Act."

been as extreme as those endeavours have been sincere. Whatever, therefore, is herein advanced as conveying my own sense of the import of the Bill, must be understood to be submitted all along to correction—to whatever correction may be thought fit to be administered by stronger minds.

* So termed here, in contradistinction to the *large-establishment* system, by which is meant that branch of the *public-establishment* system as contradistinguished from the system of *out-allowances*, according to which the establishments would separately considered be upon a *large* scale, such as that of a *country* workhouse, or even a system of workhouses, of which *four*, suppose, should be allowed to a county upon an average.

† In the Bill itself the sections are not numbered; it is not the usage: sections are never numbered either in an Act (I speak of the authentic manuscript) or in a *Bill;* I have taken upon me to number them at a venture, knowing no other means of distinguishing them in the way of *reference*. My principle of distribution has been the recurrence of the introductory surplusage, "*and be it further enacted*," coupled with the consideration of those discontinuances or breaks in the line of text, which are the mechanical result of the operations of the press.

This privation of the physical possibility of becoming the subject-matter of reference; this prolific cause and certain pledge of uncertainty, disorder, and inconsistency, each in the extreme; this privation of one of the many helps to intellection, the exclusion of which is peculiar to that species of composition in which the importance of the qualities of order, precision, and conciseness, stands at the very highest pitch; this deficiency, if it be a fault, is not the particular fault of *this* Bill or of any one concerned in it. It is the fault of *everybody*, and thence of *nobody*. [See Nomography, vol. iii. p. 233. It has of late become the practice to number the sections of Bills.—*Ed.*

Digitized by Google

By the *under-ability*, or *supplemental-wages* clause, provision is made that "if any poor person entitled to the benefit of this Act," (the *efficient cause* of *title* is not otherwise specified,) "not able to earn the full rate *or* wages, shall agree to work at an under rate, the deficiency may be made up to him out of the poor rates, *without compelling such poor person to be employed in any manner under the authority of this Act.*"

What sort of persons this class is intended to be composed of is a question respecting which I must confess myself unable to satisfy myself, not being able to collect who the persons are "*entitled to the benefit of this Act;*" thus much, however, I understand from the clause, that there *is* a class of persons to every one of whom, upon condition of their working in any manner, and receiving for their work a rate *or* wages *falling short* to any amount of the "*full rate usually given in the parish,*" *somebody* or other (I do not perfectly see who) shall have it in his power to make up the deficiency at the *public* charge.

The inability of the lowest class (I mean the worst paid class) of working hands in this country, viz. the *labourers in husbandry*, to make such provision for the sustenance of themselves and families as shall be *constantly* adequate to the purpose,—that is, under every variation which the *ability* as to *work*, the *facility* of *obtaining* work, and the *magnitude* of the *burden* resulting from the *condition* and *multitude* of the *infants* and other *helpless* branches of the family are susceptible of,—is a point which I *fear* has been but too incontestably established.*

To this inconvenience such remedies as in the course of the preceding observations presented themselves as the proper and only proper remedies, have already been pointed out. The remedies proposed by the Bill in general, and the part now in question in particular, must be confessed to be of a different stamp.

As to the casual *inadequacy* of the *earnings* of the individual compared with the *demand* for *subsistence* on the part of that same individual, two expedients have presented themselves: one is to *fix* the rate of *wages*, and thereby of earnings, viz. of the rate to be paid to individual labourers by *individual* employers; the other is leaving the rate indefinite, to make up the deficiency, whatsoever in each individual instance it may happen to amount to, at the *public* charge.

The fixation of wages is an operation which on different occasions has been *proposed*, and on some occasions even *practised* with opposite views,—to prevent what has been looked upon as *excess*, and to cure what has been looked upon as *defect*. It is with the *latter* view that it has lately been proposed with reference to the case now before us.

Against the fixation of wages with a view to prevent *deficiency* there is, however, this objection, viz. that thereby you *exclude* from employment many persons who might otherwise have obtained it. You *aggravate* the distress of the *very persons*, or at least a considerable proportion of the persons, whose condition you propose to *meliorate*. What you *can* do (let it be admitted) is so to order matters in behalf of the object of your benevolence, that if he receives *anything* he shall *not* receive *less* than what you *wish* him to receive; but what you *cannot* do is so to order matters as that, under *these* circumstances, he shall receive anything at all. To *give* him that sufficient rate of wages is an obligation *not* imposed upon *any* employer whatsoever; it is therefore an expense to which NO employer who does not think he shall find his account in it, will ever think of subjecting himself.

In a word, a regulation fixing the rate of wages so as to prevent its falling below a certain rate, is, in effect, a regulation of the prohibitive kind, excluding from employment all such hands the value of whose labour does not rise to a *level* with that rate; a prohibition enforced by a specific and unavoidable penalty, and that penalty is the *difference* (whatsoever it may be in each case) between the *highest* sum which the labour of the *workman* is worth, and the *lowest* sum which the *employer* is allowed to give.

True it is that, upon a *minute* scrutiny, the exclusion will not be found altogether *so* universal as at *first* glance it might appear. In some instances (partly from motives of a *personal* nature under the difficulty of getting another hand, but at an extra price, partly from motives of *compassion*, rather than have an industrious workman destitute) an employer, who otherwise might have got the labour of the *feeble hand* in question at an under rate, proportioned to his diminution in point of ability, will pay him that *full* and intended *legal* rate which, with reference to that ability, will be an *extra* rate. But the effect of the principle thus operating in limitation of the exclusion has its bounds. An employer *may* give 9s. a week, for example, to a labourer whose labour is worth but 8s. or 7s., but he will not give the 9s. to a labourer whose labour is worth but 3s. or 4s. He will rather give for his 9s. worth of labour 10s. or 11s. or 12s. to *one* workman in full ability, (importing him, if necessary, from another parish,) than 27s. among *three* labourers whose labour taken altogether is worth no more than the 9s.

Besides the *general* danger (the danger of idleness) inseparable from the *home-provision* system, a *particular* source of danger seems to be opened by the particular wording of *this* clause. By his character for negligence or idleness, a man, though in respect of *bodily* ability not *unequal*, perhaps, to the *fullest* rate of earnings, shall have so ordered matters that no *master* will employ him but at a rate more

* Particularly in the case of labourers in husbandry, by the Rev. David Davies, 1795, 4to.

Digitized by Google

or less *inferior* to that rate. In that case it will be perfectly true that, to use the words of the Bill, he is "*not able to earn the full rate or wages usually given:*" for, whatever may have been the *original cause* of the inability, the *existence* of it is not the less real. So far, then, as this cause of inability extends, that is so far as the class of the *idle*, the *negligent*, and the *dissolute* extends, (a multitude, the increase of which seems but too much to be apprehended from the operation of this clause,) the effect of it seems to be the putting the *idle* and *negligent* exactly upon a footing in point of prosperity and reward with the *diligent* and *industrious*.

If conjecture may be allowed, the circumstance that gave rise to this clause in the breasts of those who framed it seems to have been the humane consideration that, when a man does his *utmost*, it is *hard* to leave him in a worse condition than his neighbours on account of an infirmity which is his *misfortune* merely, not his *fault*. But the extreme difficulty of forming in each individual instance a well-grounded judgment (to whomsoever it belongs to form it) in the question *fault or no fault*, and if fault, in what degree, may, perhaps, by this time have been perceived. But *fault will* not, *ought* not to be, imputed without special and full proof: and, perhaps, the blameable conduct, the blameable cause of the inability, the *bad character* in which the inability to obtain the ordinary rate of wages originated,—this cause, though continuing and operating in full force, is susceptible of no *proof* but what is confined to a period long since *past*. This being the case, and supposing all possible ability as well as integrity on the part of those by whom the claim to this bounty is to be determined, I must confess I do not see how it can be otherwise than a *frequent*, not to say *general* case, that *idleness* should, upon the establishment of this clause, find itself in as *good* plight as *industry*.

Under this difficulty of drawing the line, an expedient which I must confess I expected to have found adopted, was the *confining* the *title* to some such *efficient cause* or causes as should be out of the reach of *counterfeiting* as well as of fabrication; old *age* stands in this respect on the *highest* ground in point of eligibility; after that come specific modifications of infirmity, such as loss of limbs, loss of the use of limbs, rupture, epilepsy, nervous afflictions, complaints which, according to the greater or less *difficulty* of *ascertaining* the *matter of fact*, will constitute so many efficient causes of inability more or less clearly, and certainly *exempt from blame*—more or less exempt from the danger of opening an inlet to *abuse*.

Whether all the precautions that *could* be taken, all the precautions which the nature of the case admits of, would be sufficient to confine the mischief within any tolerable bounds, is what I cannot but entertain some doubts of; but at any rate so long as no such checks are applied, the danger from this clause, supposing it to stand, seems very serious; for how opposite soever the views and intentions of the contrivers in the two cases, the *equalization system*, as applied to *wages*, seems hardly less threatening to *industry*, and thence to *property*, (to say nothing of the *expense*,) than, as applied to *property*, it would be to *property*, and thence to *industry*.

Against these and all other dangers of abuse the dependence for a remedy and safeguard is of course on the wisdom and integrity of those into whose hands the *execution* of the Act may come from time to time to fall: but, (not to mention how multifarious the ingredients *sine quibus non* of the mixed class called *wisdom* are,) *wisdom* may be wanting in *one* quarter, *integrity* in *another*, both together in a *third*, and after all we know not who they are. Besides that, as we have seen, the cases are various and of frequent occurrence where the union of *both* qualities, and *both* in the highest degree, would be of no avail. To oppose *all new* powers on no distincter ground than that *all* powers are open to abuse, would be the effusion of *undistinguishing* imbecility or of political *jealousy* run mad. But when a system of provision is on the carpet, involving in its essence a system of powers *particularly open* to *abuse*, the danger may at least operate as a motive for *inquiry*, whether there may not be found some *other* system less obnoxious to abuse.

What, in such case, shall be deemed this "*full rate or wages*," which is to be made up at all events is another point that seems as necessary as it may be found *difficult* to be settled. In the compass of *England* and *Wales* some hundred thousands a-year may be at stake upon this single point. 1. Is it the full rate or wages of the *highest paid* species of labour in the district in question? Certainly not in *every* case. 2. Is it the "*full rate or wages*" of the highest paid species of labour where the employment of the *individual* in question happens to be of that species? If so we may have bad *ship-wrights* pensioned at 9s. a-week or a guinea, (according as day work or piece work is taken for the standard,) or bad *mathematical instrument* makers at half as much; *this* therefore was not intended. 3. Is it the "*full rate or wages*" according to an *average* taken of the earnings of *all* the species of employment exercised within the district *put together*? This, requiring a vast previous assemblage of *highly interesting* but hitherto *uncollected* documents, is what (for that as well as other reasons) can hardly have been intended. 4. Is it the "*full rate or wages*" *earned* in the species of employment *most abundant* in the district, as the words "*usually given*" might seem to import? I should suppose nor *that* neither. 5. Is it the "*full rate or wages*" earned in the lowest (meaning the *lowest* paid) species of employment therein exercised? This I should *rather* think is what is meant, (or at least *upon this view* of the

Digitized by Google

diversity would be meant,) because this construction would be the *least dangerous;* but this is not anywhere *expressed.*

Take even the *lowest paid* species of employment, the *quantum* of the earnings will be found to admit of great variation in *great towns* (the metropolis for example) compared with *distant country* places. There are country places in which it is not higher than 1s. a-day; in London and the neighbourhood it can hardly be reckoned lower than 2s. With all this enormous difference in the *habitual* rate of *supply* the *necessary* means of living are scarcely cheaper anywhere than in London. Are so many thousands of bad workmen then, with or without families to receive near £32 a-year as a *minimum*, when less than £16 a-year is proved by experience to be enough for good ones? And who will stay in the country at single allowance if he can secure *double* allowance only by coming up to London, which partly by a late Act, partly by this *intended Act*, everybody is enabled to do without disturbance?

An answer is, that as at *present* and in practice necessity is *measured* for the purpose of *relief*, so in future and *under this Act* will wages be measured for the same purpose. The reply is, *no such thing.* As far as the intended law is *obeyed*, as far as it produces the effect it aims at, the measure at *present*, used for this purpose will *not* be employed but *laid aside.* Under the *existing* order of things the relief granted *is* measured by and adjusted to what (in the breasts of those to whom it belongs to judge) *is* the proper *quantum* of the demand on the score of indigence. But this mode of measurement is precisely that which will *not* satisfy the liberality of the framer of the Act, for this is what the Act declares, if it declares anything. *Full* is a word not only of precision, but of *energy.* The "*full rate,*" that and nothing less, is the rate without which the legislator has declared he will not in *future* be satisfied; and whosoever presumes to give less than that full rate *disobeys.* That such disobedience would not be uncommon is what I will not say either *I should hope* or *I should fear*, but what at any rate I should *expect.* But where would be the expediency of that law of which the sole trust were to be in the disobedience it might excite? Meantime disobedience, eligible or ineligible, pardonable or unpardonable, will not be *universal.* *Five* standards (as we have seen) for the measurement of the bounty, five standards rising one above another in liberality, will be in every parish open to a man's choice. In each instance, be his *inclinations* what they may, ever so *weak*, ever so *lavish*, ever so *heedless*, within the prodigious scale raised up by these five standards, a man may without much straining find a warrant in this part of the intended Act; but at any rate, to one or other of them he *must* conform himself if he pays any regard to the Act:—five standards, the lowest of them little less than sufficient, as we have seen, to double the poor rates, overwhelm the metropolis, and depopulate whatever part of the country is not covered by a town.

CHAPTER III.

2. *Family-Relief, or Extra-Children Clause.*

"XXXVII. And be it further enacted, That any father entitled to the benefit of this Act, and having more than two children under the respective ages of five years, and part of his family unable to maintain themselves; and any widow being so entitled, and having more than one such child, and part of her family, shall have such allowances from the parish or united parishes where he or she shall reside, in respect of all such children of such father beyond the number of two; and in respect of all such children of such widow beyond the number of one; to such amount as the person or persons appointed to the management of the poor of such parish or united parishes, with the consent of the visiters of the district in rotation or any two of them, shall deem sufficient for the maintenance of such child or children under all circumstances, or as two justices of the peace in the district on appeal from the allowances made by the consent of the said visiters, shall order and direct; and that such allowances so made shall continue in respect of such child or children above the number of two and one respectively, until such child or children, in respect of whom such allowances are made, can and shall maintain themselves by their labour; and that all and every the child or children of any such father or widow being respectively of the age of five years or upwards, in respect of whom any such allowance as aforesaid shall be paid, shall, upon request made in pursuance of this Act, be sent into the school or schools of industry established in or for any parish or united parishes, and shall be received into such school or schools of industry to be instructed and employed in such business as shall be suited to the age and strength of such child or children, and not dangerous or prejudicial to the health of such child or children, unless the parent or parents of him, her, or them, will undertake diligently to instruct and employ, and shall diligently instruct and employ such child or children at their own homes in such business as the person or persons appointed to the management of the poor of such parish or united parishes, or the manager of the said school or schools of industry, shall from time to time direct; and which such persons respectively are hereby authorized to direct to be done in conformity to the provisions of this Act, and that such allowances so directed shall continue to be paid until such respective children can maintain themselves by their labour,

Digitized by Google

and that the earnings of every such child, to whom any such allowance shall be directed to be paid, except such part thereof as is hereinafter directed to be allowed to the parent or parents of any child or children who shall be industrious and conform to the rules established by or in pursuance of this Act, shall, during the continuance of the same, go in aid of the fund for the support of the said school or schools of industry; and that any child or children whose parent or parents is or are not able to maintain them, and in respect of whom no such allowance shall be paid or payable by virtue of this Act, may be received into such school of industry, to be therein instructed and employed in such work or employment as shall be suited to such child or children as before directed, or in such other place and under such instruction as shall be agreed upon in the manner before directed, and under such terms and conditions or at such rate or wages, as shall, in pursuance of this Act, be settled to be paid and performed in consideration of the work done by such child or children; and the earnings of such last-mentioned child or children, except such part thereof as shall be allowed as aforesaid, shall go in aid of the fund for the support of such school or schools of industry."

In this Section (clause 1) two classes of persons are instituted, who, on the condition of their respectively having a certain number of children, parts of their respective "*families, and unable to maintain themselves*," shall be entitled to a weekly allowance, considered in respect to its *quantum;* this allowance is *not* to amount at any rate to *less* than 1s. a-week for each *extra child*, and it may amount to ever so much *more*. Considered in respect to its *duration*, it is to continue not only till each such extra child shall be *able* to maintain itself by its own labour, but till it *actually shall* maintain itself by its own labour,—"*can* and *shall* maintain themselves by their labour," says the Act.

1. Measuring the extent of this clause, we shall find it, I much fear, at once too *ample* and too *narrow:* too ample to be reconcileable to the interests of private industry or of public economy; too narrow to cover the extent of the *demand* for the relief which itself provides. To judge of the demand in point of *necessity* and *utility* for the *bounties* given by this clause, let us observe upon what footing the *title* to *relief* stands under the *existing* order of things. At present, supposing the *discretion* properly and successfully exercised, *demand* and *supply* are proportioned to each other: from those who have *not* wherewithal to maintain themselves and families, be those families ever so *small*, relief will *not* be *withholden;* to those who *have* wherewithal to maintain themselves and families, be those families ever so *large*, relief will *not* be *given*. Under this clause a family may labour under the severest *distress*, and derive *no* benefit from the intended Act. A family may wallow in abundance, and derive an enormous pension from it. To entitle the head of the family to the allowance—to the pension or congeries of pensions thus provided, it is not necessary that the family *taken together* should be unable otherwise to maintain itself. It is sufficient if the *extra children*, the children taken in the extra number, should, *separately* taken, be unable to maintain themselves. The heads of families in question as described are, first, a *father* having more than *two* "children unable to maintain themselves;" and, second, "a *widow* having more than *one* such child." As to the difference made here between *fathers* and *widows*, that in general the *ability* of the *male* sex in this respect will be greater than that of the *female* is not to be disputed. But will it in *every* instance be exactly in that proportion? May not there be some instances in which a *woman* with a *good* trade will be better able to maintain *two* children than a *man* to maintain the *same number* with a *bad* one? May not the instances be *many* in which a *man* with or without a *wife* shall be better able to maintain *three* children than a *widow* to maintain *two*? And may not there be instances where a widow with *two* children shall be better able to maintain herself and family, than a widow left pregnant for instance with *one* child in arms, or in a state requiring still more attendance, may be able to maintain herself and *that one*?

Doubts remain with regard to the *import* that are material to the *effect*. This inability with regard to the maintaining themselves, is it *sufficient* if it extend to the *supernumerary* children, or *must* it extend to all the children? And in either case is it *sufficient* if it be *partial*, or *must* it be *entire*?

2. As to the *quantum* of the pension. Under the *existing* system if 6d. a-week (for example) per child be *requisite* and *sufficient* to make up for the deficiency of earnings, 6d. a-week *may*, without any further addition, be allowed. Under *this* Bill 1s. a-week, requisite or not requisite, *must*, if *anything*, be allowed. Shillings in any number *may* be allowed, and that more than one *should* in *general*, or at least *frequently*, be allowed, seems to be intended: for that *less* than 1s. requisite or not requisite should not in *any* case be allowed is *expressly* stipulated. A shilling a-week is £2, 12s. a-year; 6d. a-week is £1, 6s.; 9d. a-week is £1, 19s.; 3d. a-week is 13s. Thirty-nine shillings, (almost £2 a-year,) or even 26s., or even 13s. a-year, repeated upon forty or fifty thousand children, amounts to no small sum. Granting (what is a good deal to grant) that less than the shilling a-week cannot in *any situation*, or at *any age*, be made to suffice for the maintenance of *any* child,—what cannot *possibly* be granted is, that this deficiency in the amount of earnings cannot exist in the shape of any *less* sum than the *entire amount* of the sum necessary for the child's maintenance. In situ-

Digitized by Google

ations where money is oftener reckoned by millions and thousands than by pounds and shillings, the saving that might be made upon a pitiful shilling a-week is apt to appear as nothing; but where a penny comes so often to be repeated, an error to the amount of a few pence in this *low* pension-list may amount to a source of profusion not only more abundant in *quantity*, but much less warranted by use as well as much more pregnant with *mischief*, than even the *high* pension-list which is the object of so much jealousy as well as so much envy.

3. The *duration* of the allowance presents another topic of observation. The continuance is to be until the children in question actually "*shall maintain themselves by their labour:*" while their earning anything will depend of course upon the head of the family, who, through wilfulness, or negligence, or indolence, may keep the children either in *idleness* or employed in *labour*, which, however useful to the family, *cannot* or *need* not be brought to account in the shape of a *fixed sum* so long as the allowance, excessive or moderate, is to continue.

The maintenance, it may be said, will be afforded, and that in the fixed shape in question, by the wages which the child will receive for the work which the head of the family must send the child to perform at the school of industry on pain of receiving none of the *benefits of the Act*. It *may* be so; but, however, it *may* be *otherwise*. The children may, some or all of them, be under the age, (five years is the age at which this schooling is to commence, sec. 20.) In a thinly-peopled part of the country the burthen of the school, with its *schoolmaster* and *schoolmistress*, and *warehouse* and *warehouse-keeper*, will, if the parish be *single*, be by far too heavy for it: if several parishes are put together, the school, put it *where* you will, by its distance will be rendered inaccessible to a great part of its scholars. The pensions are to commence in July next, (Sec. 1, 67.) Not a school can be begun to be built till at the *end* of a *chain* of administrative operations, such as in known instances has taken up *years*, and of which the first *link* cannot take place till *after Michaelmas*, (Sec. 10,) and it is in aid of the "*fund* for the support of the *schools*," and *not* in aid of this *pension-fund*, that the earnings, whenever they *do* take place, are after all to be applied.

A circumstance that renders the danger the more formidable is, that the *two* currents of profusion, the allowance on the score of *extra children*, and the allowance on the score of *supplemental wages*, may, for anything that appears to the contrary, mingle *together*, and flow with *united force*. First comes the *pay* of the *idler*, made up to an *equality* with the *earnings* of the *industrious*; then come the *extra children* of the idler to be put in whatsoever number upon the *pension-list*.

"Regard" (it is provided) shall be "had to the earnings of the *family*." Regard (it is provided) shall be had to the allowance from a fund, not named, but which appears to be what I call the *superannuation* fund; but of any "*regard which may be had*" to any such allowance as that on the score of *extra children*, no mention is to be found. No deduction is, therefore, *intended* to be made on any such score.

The over-narrowness of the provision with reference to its evident object, the *scantiness* of it in a particular point of view, comes now to be considered. To characterize the *head* of a family on whose labour the subsistence of the family is considered as depending, "*father*" if of the male sex, "*widow*" if of the female, are the only terms employed. But there are *other* relations which are either *charged* by *law*, or at least apt to be *engaged* by *shame* or *affection* in the maintenance, or at any rate in the *guardianship* of their infant or OTHER HELPLESS relatives. Within this sphere of duty, perfect or imperfect, (for I will not plunge into discussions of *positive* law for the purpose of drawing the line,) *grandfather* and *grandmother*, *brother* and *sister*, *uncle* and *aunt*, may at any rate be considered as comprised. In whatever point of view the matter be considered, if the claims of the *two* relations *specified* are to be regarded as *strong enough* with reference to the intended bounty, those of the six relations *not specified* present themselves as *still stronger*.

In the instance of these comparatively distant relatives, if *bound* by law, the *burthen* of the *obligation*, unaccompanied as it is in their case with those matrimonial comforts which constitute the equivalent for parental burthens, is so much the *harder*: if *not bound*, the act of *taking* up the burthen is so much the more *meritorious*, and stands so much the more in need of foreign inducements to give it birth.

To give *consistency* to the provision by the *supply* of these *omissions* is a task which, though certainly *not impracticable*, would be found *not unaccompanied with difficulty*, and if the *expediency* of the provision considered in substance be liable to *doubts*, this *difficulty* will add *force* to them. *Complication* is of *itself* an evil, and *such* an evil as requires no inconsiderable mass of *benefit* to *outweigh* it.

CHAPTER IV.

3. *Cow-Money Clause.*

"LXVII. And be it further enacted, That whenever any poor person entitled to the benefit of this Act, shall want relief for himself or herself, or his or her family, and such person shall be possessed or can obtain possession of land, or is entitled unto common of pasture sufficient to maintain a cow, or other animal yielding profit, whereby such poor person by care and industry might, in addition to their other earnings, acquire a competence to main-

Digitized by Google

tain himself or herself, and his or her family without further parochial relief, it shall and may be lawful for any two justices of the peace in the district, on the recommendation of the persons appointed to the management of the poor in such parish or united parishes aforesaid, and of two of the visiters of the district in rotation, certifying that such person is of good character, and that, in their opinion, an advance in money for the purpose mentioned in the said certificate (and which purpose shall be set forth in the certificate of such persons appointed to the management of the said poor) might tend to increase the income of such person, and thereby ultimately tend to diminish the parochial burthens, and which certificate shall be in the form No. , in the Schedule hereunto annexed. And which justices are hereby authorized and empowered, on receipt of such certificate, and on due consideration, to order and direct the payment of such money in advance, as in the judgment of such justices will be necessary for the purchase of such cow or other animal, or to direct security to be given for the rent of such land, and which money so to be allowed shall not exceed what shall be necessary to increase the income of such person by the profits to arise therefrom, to the amount to which such person would be entitled to relief for himself or herself, or for his or her family."

I now come to the cow-money clause. The *benevolence* which suggested this clause is expressed in the most conspicuous characters; on the question of *policy*, the following observations have presented themselves.

Hitherto the danger of profusion has confined itself to *income*: it now threatens *capital*. In the *preceding* clauses the allowances authorized, how much soever too ample, continued to be, as they are under the existing system, in the first instance occasional only, at the worst gradual, accommodated as to their rate of efflux to the influx of the fund from which alone they could be derived. Here *capital* is given under the very *name* of capital, and as a substitute to income. The pension *during pleasure* is instantly converted into a pension *for years* or *during life*, and that pension *at the same instant* bought out by a *gross* sum, leaving the demand for a *fresh* pension to recur at any time, to be again bought off, and so *toties quoties*. The spigot was *there* opened, *here* the bung-hole.

It would be *something* in the way of security, though surely not much, if the cow were but safely lodged in the cow-house of the indigent to whom the possession of her is to be an inexhaustible spring of affluence. But even *this* security, slender as it is, is not provided. The capital is to be advanced, not in the shape of the *cow*, but in the shape of *hard money*, with which the object of this extraordinary bounty is left perfectly at liberty to lay in a fund either in *milk* or *gin*, according to his taste.

The cow *dies* or is *stolen*, or (what is much more likely) is *supposed* to be stolen, being clandestinely *sold* to an obliging purchaser at a distance. What is to be done? "*Want of relief*" warranted the *first* cow; the same cause will necessitate a *second*—limit who can the succeeding *series* of cows: The disappearance of the *first* cow (it may be said) will excite *suspicion*; the disappearance of a second cow will *strengthen suspicion*; true, but upon a mere suspicion without *proof* will a family be left to *starve*? The utmost security then amounts to *this*, that to a certain number of successive pensions thus *bought out* will succeed a pension which will *not* be bought out.*

By donations or loans of this sort, made by gentlemen, of high amount to deserving individuals, selected from such of their tenants or dependants as have been fortunate enough to be comprised within the circle of their notice, *good* is said to have been done in certain instances. I make no doubt of it. Milk is a wholesome as well as pleasant beverage; milk is particularly good for children. Thirty pounds, twenty pounds, or even ten pounds, cannot but form a very comfortable accession to the property of an individual who happens at the time to be suffering under the pressure of indigence. When at his *own* expense a man administers charity in so large a mass, it would be extraordinary indeed if he did not pay a *considerable* attention to the propriety of the application of it; and should the *object* prove *less deserving* than was supposed, or the *benefit* less *permanent* than was hoped, there is at least no *immediate perceptible* harm done to any *assignable* individual. But while the hands by which the bounty is to be dealt out remain in the clouds, or were they even lying upon the table, it seems rather too much to expect *equal* attention, or even in general *sufficient* attention, when the *praise* and the *thanks* are reaped by the hands which thus disseminate the bounty,

* The *quantum* of the capital thus to be hazarded is no light matter. A friend of mine, who at this present time happens to be looking out for a cow, assures me he can hear of no animal of that kind to be sold for less than £30 that can be depended upon for giving milk sufficient to pay for her keep, for "*yielding profit*," to use the expression in the Bill. The *time*, it is true, is a dear one; and the *place*, the vicinity of the metropolis. But to this purpose, within what may be termed the *vicinity* of the metropolis, a circle of at least twenty miles radius must surely be comprised. A cow which is worth £30 in the heart of this southern division of the two united kingdoms, can hardly be worth less than £15 at the very furthest extremity; because a difference much less than that of £15 a-head would, upon a very moderate number of cows, abundantly pay for the expense of driving them up to London, from even the most distant parts of England. This £30 price (let us hope) will not *always* continue; but at the most favourable season, should it fall to £20, the reduction will be full as much, I fear, as can reasonably be expected.

Digitized by Google

while the *burthen* of it rests on the shoulders of *third persons*.

Over and above the general love of *popularity*, motives of a more personal nature may intervene, and that most naturally and frequently to no such light amount. A man to all appearance wanting "relief" for "*him*"... "self" or *his* "family," and who to all appearance "would be enabled by the advance of money for purchasing a cow" "to maintain him"..."self" and his "family" without further "parochial relief," may, besides being to all appearance a very industrious and deserving man, have the good fortune to possess a *vote*. No matter what the situation, high or low—parliamentary or having nothing to do with parliament, for a county, for a borough, or for one of those situations which gives votes for boroughs. If he *himself* does not possess the vote, the father, or his son, or his brother, or the father or brother of his wife or sweetheart may, which may come to much the same thing. To any man thus circumstanced (and the multitude of men thus circumstanced is not likely to be small) this *cow-money* clause will be a matter of particular convenience. To give the value of a dinner to such a purpose might be an act of imprudence as well as a matter of expense, and as (experience has shown) might be fatal to the cause. A bounty for good votes, a bounty to the amount of £10, as we have seen, or £20, or £30, might, under favour of this clause, be given with the most perfect safety, and without a farthing expense.

It is the *profusion*, I must confess, that frightens me; the topic of *corruption* I leave to more brilliant pens. Figures of arithmetic, and not of speech, are the figures that govern me. Standing even upon this frigid ground, I can see no bounds, I must confess, to the profusion, where the incentive remaining in full force, the main checks, all the checks which preserve any tolerable uniformity of operation, are thus to be taken away.

Even the *shape* of the bounty seems to my unfortunate apprehension as objectionable as the *quantum* of it. If the £10, or the £20, or the £30, *must* be given, I had rather have seen the disposal of it left altogether to the dispensing hand than clogged with the condition enforced or not enforced of converting it into a *cow*.

1. A resource which is to supply a *permanent* deficiency *should* be permanent as that deficiency. Here the deficiency is deemed *permanent*, since an *occasional* or *temporary* allowance is deemed inadequate to the supply of it. The probable remainder of the life of a cow, already in a condition to yield an annuity in the shape of milk, is limited, sickness and casualties apart, to about eight years, after which she may sell for about half price.

2. A resource which is to supply a permanent deficiency should in the variations, if any, to which the amount of it is subjected or exposed, *keep pace* with any variation in the deficiency, or, if that cannot be, should remain *constant* and *invariable*, so as to afford a solid ground of dependence without any *partial*, much less *total*, cessation during the period that the demand continues in *unabated* force. But the annuity paid by a cow undergoes a necessary suspension;—frequently of four months' continuance, never of less than two months,—average, (say) three months, or a quarter of a year.

3. A supply allotted as a resource to indigence should be of a nature rather to *strengthen* by *exercise*, than to *weaken* by *omission* or disuse, the spirit and habit of *industry*. A *dairy* of cows *would* do this. Attendance upon a *single* cow is a species of industry, if industry it can be called, which is, of anything that *can* bear that name, the nearest of kin to idleness.

4. In the *general* account of the national wellbeing nothing is gained, but a good deal lost, if *Paul* be *stript* of as much as is *bestowed* on *Peter*. Setting aside the accidental faculty of profiting by the too-little-known opportunities afforded by husbandry in its highest and freshest state of improvement—to the maintenance of a cow the possession of *land* will be indispensable. This land must either be land in separate *ownership*, or land in the state of *waste*, and *common land*. Of land in *separate ownership* about three acres is looked upon as necessary to the constant maintenance of a cow. Those three acres, how are they to be had? are they to be *bought* and *given* along with the cow? This the clause does not go so far as to say. Are they to be *hired*, and the *rent paid* for them?—not to mention cow-house and dairy, for which articles shifts (it may be said) will be made. Nor for *this* neither does the clause go so far as to make provision. The cow, then, is to be turned upon the *common*; but no sooner is the cow upon the *common* than the expiration of the annuity of at least by far the greatest part of it, five, six, or seven-eighths, is certain and near at hand. In the existing state of population on the one hand, and husbandry on the other, it is a point pretty well ascertained,—a common *will* afford *airing ground* to a milch cow, but it will *not* afford *maintenance*. It *will* keep the *animal* alive; but it will *not* keep alive in her the capacity of yielding milk in a quantity amounting to a resource. While the *annuity* is thus sinking, so is the value of the *capital* itself. After a year's existence upon a common, a well-fed cow turned out in the increasing vigour of her youth will instead of *gaining* have *lost* in value.

But before the cow was turned upon the common the common was *already* overcharged. The common which is *not* already in this state it will I believe be difficult to find. The *accession* of this new mouth will not *add* to the quantity of the *pasture*. So much, therefore, as the owner of *this cow gets*, so much do the owners of *other* cows *lose*.

Capital, therefore, cannot be given in this shape without being paid for at least *twice over*,

Digitized by Google

(even laying out of the question the certain and enormous depreciation in value:) once by the amount of the purchase-money, again by the amount of the *annuity or rent charge* thrown by the depreciation of the amount of the pasture upon the *other* commons: a depreciation *equal* at least to the utmost gain accruing to the *commons* thus *favoured*. If £10 then be the money *paid*, and £10 be the value of the cow to the individual on whom she is bestowed, £20 at least would be the loss to the *community*, the receiver of the bounty deducted:—£10, the *clear* loss to the *whole* community, the receiver of the bounty included.

By donations in any shape you may take a few favoured individuals out of the class of poor, and place them in the class of people of easy circumstances. But this, which is only the system of monastic charity upon a great scale, giving the beef whole instead of dealing it out in broth, is limited in its extent as well as pernicious in its effects, and in relieving present indigence sows the seed of future.

The system to be sought for is a system which shall make the supply of means keep pace with that of wants, and that by a pre-established chain of causes and effects, whatever be the rapidity or anomality of the progression. This problem has been the object of a good deal of reflection, embracing the subject in all its relations and dependencies, and the solution of it is supposed to be effected.

Consistency may be another point to be considered. While the Bill with this clause in it for the *surcharging* of common lands is depending, another Bill is depending, or at least in contemplation, the professed and sole object of which is the *diminution* of the *quantity* of the land thus circumstanced. The principle in the one case is, that the existence of land in this state is *advantageous* to the community; in the other case, that it is *disadvantageous*. An option between these two conflicting measures seems very requisite to be made.

The tendency of the *General Enclosure Bill* seems alike favourable to the interests of the *rich* and *poor*. It does, perhaps, without much seeking, all that *can* be done, of what appears to be *sought* to be done by the *present Bill*. Its most direct and prominent object is the giving facility to the *wealthy* towards the augmentation of their wealth. But at the same instant it effects with equal certainty an object of still higher amount, the raising of the wages of labour in favour of a class among the poor, and that the only one in which the wages of labour have been shown to be in many cases unavoidably inadequate to the purpose of maintenance.

I confine myself to the cow, because the cow alone occupies the foreground; there are indeed other animals in the offscape, but the species are indiscernible, and I have already plunged but too deep into the details of husbandry.

I should incline to the *sow* as absorbing less capital, as giving more exercise to industry, and affording a resource less precarious in its nature. But there are those that will tell me that in the government of the *dairy* swine are dependent upon cows; nor will the expensive beneficence of the author of this clause content itself with so inferior a resource. Looking beyond the sow I see everything or nothing. A rattle-snake is "*yielding profit*" to the hand that shows it, and no *common* is surcharged by it.

The resource presented by a *loom* is a *permanent* one: it *may* be *rendered* an *unfluctuating* one. A loom eats nothing; is not apt to be sick; does not sink in value by under-feeding; has no legs to be driven away upon; and is not exposed to sudden death. The working of one loom need not hinder the working of another.

A loom is but one example of a machine. But protesting against the donation of capital in any shape, protesting against the *principle*, I will not dive further into the mode.*

CHAPTER V.

4. *Relief-Extension, or Opulence-Relief Clause.*

"LXVIII. And be it further enacted, That no person shall be excluded from parochial relief, or the benefit of this Act in any particular before-mentioned, on account of any real estate hereinafter-mentioned, or on account of any visible property not exceeding the value of £ in the whole, and of the description hereinafter mentioned, that is to say, if such property shall consist of a tenement or cottage with the appurtenances, whether such person shall hold the same or any part thereof in his or her own right, or in the right of his wife, and whether severally or as joint tenant, or as tenant in common, or shall occupy any tenement or cottage with the appurtenances, belonging to his or her lawful child or children, or the issue of such child or children being respectively part of his or her family, and whether as guardians or otherwise, of whatever value the said tenement or cottage with the appurtenances may be, and also if such property shall consist of tools or implements of trade, or household furniture, wearing apparel, or other necessaries suitable to the condition of such poor person, not exceeding in value in the whole the sum of £ , but that every person in the situation and condition before-mentioned, and not able from other circumstances to maintain himself or herself, or his or her family, shall be

* Some five-and-twenty years ago, I remember seeing in Elmsley's window, fresh imported from Germany, a book with this title, "Means of *Enriching States*," by an Aulic Counsellor to one of the Margraves. It was seized with an avidity proportioned to the importance of the discovery. *The secret had been tried, and had succeeded.* It consisted in stocking your farms *well* with cows. But the difficulty was to *get* the cows.

Digitized by Google

entitled to the benefit of this Act as fully and effectually as if such person was not possessed of such property as aforesaid."

We come now to the *relief-extension* clause, or *opulence-relief* clause. In reading the above system of donations, a natural, and I am apt to think, a scarcely avoidable supposition is, that it is for the *indigent*, and the indigent *only*, that they could have been intended; whether they are *really* confined to the indigent, whether the field open to them be not so ample as to comprise what in the instance of people of the *working* class may be styled *opulence* is a question on which it will rest with the reader to decide.

The proviso is "*that no person shall be excluded from parochial relief or any of the benefits of this Act, on account of the possession of any tenement or cottage with its appurtenances, whatever may be his or her estate or interest therein, or on account of any other visible property not exceeding in the whole the value of £30, which shall consist either of tools or implements of trade or household furniture, wearing apparel, or other necessaries suitable to the condition of such poor persons.*"

Under these words, what seems tolerably clear is that a man may be worth £30 of "*visible* property," (to say nothing of concealed or non-apparent property,) and still come with as irrecusable claim to the above list of pensions and donations as if he had not property to the value of a single farthing. What to myself (I must confess) *is not* by any means clear, is to what higher pitch the opulence may rise without striking the proprietor's name out of the book of indigence.

Let us consider it, in the first place, as *not* exceeding £30. A document naturally enough to be wished for by one who would wish to form a just estimate of the effect of this clause, is a comparative statement, setting forth on one hand the number actual or probable of individuals whose property *rises* to the *height* of this *minimum*, on the other hand the number of those whose property *falls short* of it. Should the indigent list, as thus defined, be found, as I cannot help vehemently suspecting it would be found, to include a vast majority of the good people of England, five, six, or seven millions for example, the system of *home provision*, as thus explained, would be found (I much fear) to amount to a plan for *throwing the parish upon the parish*.

The nature of the process by which the mass of national wealth is *accumulated* was (I doubt) not sufficiently considered in the formation of this Bill. To judge by this clause in particular, it looks as if certain hypotheses somewhat of kin to the following had been assumed—that wealth is the gift of nature, not the fruit of industry; that every human creature, male as well as female, comes into the world with £30 in its pocket; and that this sum is what it belongs to the government to guarantee to every man the undiminished possession of against misfortune and imprudence, as it guarantees to him the possession of his two arms and his two legs against the attacks of injury.

The apprehension of doing undesigned injustice to the intentions of the Bill is an apprehension that pursues me through the whole tenor of it, but really I know of no means of coming at the *intention* of an instrument, unless it be through the *words*. Judging of it, then, from the words, £30 is the mass of property which *every* person *without exception* may it is supposed possess, and yet be in a state of indigence: in a state so low, so much below the natural state of man, as ought not to be suffered to continue. This *minimum*, the guarantee we see thus made of it, is not confined to *families collectively taken;* it is not confined to heads of families; it extends to every human being whatsoever, having a family or none, living *under the head* of a family, or living by *himself*. A head of a family may have his own £30,—£300 may be the amount of the family estate, and all the while the family hanging on the parish.

If consistency be an object in legislation, it may be worth while to compare this intended *pauper relief* with the Pauper Law Relief Act of Geo. I., which exempts, or seeks to exempt persons, whose circumstances fall below a certain pitch of supposed indigence, from the sort of general outlawry in which that proportion of the people stands involved; against which the weight of the expense, howsoever heaped together, has shut the doors of justice. Five pounds is the sum assigned in *that* case, £30 (not to say £300) is the sum assigned in the present case; according to this proportion it will be matter of some curiosity to observe how much easier a man will find it to get *other* people's money than his *own*, and how many there will be in possession of the *former* faculty, while they stand excluded from the *latter*.

That it is by no means clear that under this clause the specified sum of £30 is the highest which a man might retain of his *own* while he was maintained at the charge of *others*, has been already hinted; and the more closely the clause is scrutinized into, the greater the difficulty of ascertaining the real limit will appear.

My doubt is, in the first place, whether in the computation of the visible property the moveable is, or is not, to be added to the immoveable; whether the words "*in the whole*," are meant to be confined to the "*other visible property*," or to be extended to the *tenement* or "*cottage*." That they were not meant to extend to the tenement or cottage, and that therefore a man may, without standing excluded from any of these bounties, be possessed of £30 worth of visible *moveable* property in addition to the fee-simple of a cottage, may be thus argued.

From the word "appurtenances," it may be

Digitized by Google

inferred that the cottage may have more or less land annexed to it, especially when it is considered that under the *cow-money clause*, it is intended a man shall keep a cow. But even without land, 40s. or even 50s. a-year is but an ordinary rent, but an ordinary annual value, for a cottage; and as in the instance of immoveable property, small concerns (coming within the reach of a greater proportion of purchasers) are apt to sell for more years' purchase than *large* ones, twenty years' purchase upon 40s. a-year, that is £40, may be taken for rather a low estimate. Allow but the £30 for the value of the dwelling, this will not leave a farthing for the furniture, tools, clothes, and other necessaries. It does not seem to accord with the views manifested in this Bill, that the property of the cottage a man lives in, altogether unaccompanied with any other necessary, should debar altogether from a share in the bounty so liberally bestowed, when the annual value of the house is no more than the ordinary rent of the abodes of the *worst paid* class of labourers.

But if the value of the cottage is *not* to be *included* in the £30, it is then to be *added* to the £30; £40 worth of immoveable property upon a low estimate may thus be added to £30 of immoveable property, and the possessor not excluded by this £70 from the right of obtaining cows, supplemental wages, and pensions, on the plea of indigence.

The pursuit of the strict rules of grammar might raise up other difficulties in abundance, on the ground of this *single* clause: but this specimen may suffice.

The more conspicuous the spirit of humanity that shines through every clause, the more sincerely one regrets to see it in such straits. What seems to have led the author of the Bill into the difficulty in the present instance, is the often painted, and always melancholy, picture of an industrious family, reduced by blameless misfortune from a state of comfort and independence to a state, perhaps, of *confinement*, at any rate of wretched dependence, from which a small relief, if administered in time, might have rescued them; dependence on scanty and, in point of quantity, precarious charity, confinement to the idleness, and discomfort, and ignominy of an ordinary poor-house,—*Come in and give up your all, or stay out and starve;* such is the harsh though unavoidable alternative presented by poor-house charity in the existing state of things; an alternative the more excruciating when the *all* thus to be given up for a mess of pottage is (as it sometimes will be found to be) the sad remnant of fallen opulence, sufficient at one time to place its possessor above the necessity of manual labour.

This is one of the many cases in which compassion is as laudable, as in a feeling heart, it is unavoidable. But compassion is one thing; relief, efficacious and unmischievous relief, a very different thing: the one may be *always* bestowed and in any quantity; the other should never be attempted to be bestowed, especially at the *expense* of the community, and upon a scale extending over the *whole* community, till after the strictest and most comprehensive inquiry whether the undertaking lies within the sphere of practicability, and whether the removal of the evil, if possible, be not inseparably connected with the introduction of still heavier and more extensive, though less permanent and immediate, evils. We commiserate *Darius*, we commiserate *Lear*, but it is not in the power of *parishes* to give kingdoms. To banish not only *indigence* but *dependence*, it would be necessary to banish not only *misfortune* but *improvidence*. To guarantee to every man a *subsistence* is *practicable* and *practised;* to guarantee to every man the perpetuity of his station in the scale of opulence would be altogether impracticable, the very *attempt mischievous* and *perseverence ruinous*.

What seems not to have been sufficiently considered is, that betwixt the *absolute refusal of relief* and the exaction of the *absolute surrender of permanent* property, in return for *transient relief*, there is a *medium*, which is the granting the relief to the extent of the property on the footing of a loan. This middle course, the only feasible one, the only unpernicious one, is practicable, for it is *practised*. A mode of practising it, and practising it without expense, forms one leading feature of the *large-establishment* system in the shape and magnitude herein-above supposed.

Meantime, although it were regarded as an established point that cottages, any more than kingdoms, cannot by the hand of *public* charity be secured against decline, let us not conclude that the misfortune is altogether beyond the relief of remedy. It is in this quarter of the region of distress that we may behold a part of the extensive field in which *private* charity, as well as domestic friendship, may exercise and feast itself without prejudice either to *industry* or *justice;* nor let it remain unheeded that so long as there is *propriety* or even established CHARACTER, with but a tolerable prospect of *repayment*, if no assisting hand can be obtained either from domestic connexion, from neighbourly intimacy, from special patronage, or from wide-spreading though private charity, the presumption, though not absolutely conclusive, is at any rate not weak, not only that extraordinary merit, but that ordinary good conduct, has been wanting; and that the pangs of falling prosperty are but the just and *useful* punishment of improbity or improvidence.

Thus stands the account of the mischief, the apprehension of which has been excited by the view of the destined amendments to the existing system of *out-allowances*. What possible good can arise out of those amendments in any instance, I must confess myself unable

Digitized by Google

to conceive. Under the existing system indigence does actually receive *such*, and, taken in the lump, at least as *much* relief as is *necessary*. The plan of *distribution* remaining untouched, what was the task that could remain for these amendments? Either to do *nothing*, or to administer relief where it is not necessary.

Against the system of *out-allowances* (setting aside these objections on the score of economy and industry, which have been urged by way of objection to the system itself) the great and general complaint, as far as I have had occasion to observe, is, not that it is *insufficient*, but that it *should* be *necessary*; that is, that many industrious hands should be continually *thrown upon* the *parish*, (as the phrase is,) who ought (as certainly they ought, *if possible*) to be enabled to maintain themselves without being subjected to any such degrading obligation. But the *keeping* them *from* thus falling upon the parish is what the Bill neither *does*, nor so much as *professes* to do. So far from it, as far as it does anything, it *throws* them there, it throws them in greater *numbers*; it throws them with greater weight. The *grievance* is that the industrious *poor* should be so liable to be *indigent*, that the *independent* hand should be so liable to fall into *dependence*. Whether the cure be possible is another question; but be that as it may the Bill does not attempt it.

What I had all along been considering as a point understood to have been established, was the inferiority of the wages of *husbandry* as compared with those of other labour. What I had in consequence understood to have been the object of the Bill, as far as *out-allowances* are concerned, was to confine the bounty to the class which presents the title to it. But unless the benefit of the *cow-money* clause be thus confined, (which it can only be by *forced implication*, for there are no words of *limitation*, to perform the office,) I can see no branch of the bounty to which *working hands* in *general* have not a claim as irrecusable as any that can be made by this *particular*, though not very *ample* class: *all* are equally *invited*, none *excepted*; manufacturers, handicraftsmen, even domestic servants, and others, the high paid and pampered inhabitants of *large towns*.

If *necessity* (it may be said) *be equal, no matter what the class*. True, but in any other class necessity is *not* equal; at the same time that in *every* class, "*the full rate or wages*," (whatever be the *class* and whatever be the *rate*,) the full rate or *wages*, be the work worth *any*thing or *nothing*, is guaranteed by the Bill to every hand without exception, which with ever so little good-will or fruit will set itself to work. The bounties it provides are bestowed (for anything that appears) not only upon the *worst paid* classes, but upon *every better paid* class, up to the *best* paid. And upon these the *quantum* of the bounty it bestows is not a quantity limited by that which is *necessary*, but a *superfluous* quantity rising up to the height of the highest pitch of superfluity which the earnings of the *best paid* class are capable of furnishing. It relieves them not according to the measure of their necessities, nor according to the quantity of relief they really want, but according to the "*full rate or wages usually given*,"—*given* one knows not to *whom*, unless to *them*; in a word, according to the means they have had in their hands of placing *themselves* above the necessity and above the bounty.

CHAPTER VI.

5. *Apprenticeship Clause.*

"XL. And be it further enacted, That all poor children, who shall at any time have received employment under or by virtue of this Act, and shall obtain a certificate of his or her good behaviour during the time of such employment from the person or persons appointed to the management of the poor of any parish or united parishes, with the consent of two of the visiters of the district in rotation, and confirmed by the guardian of the poor for the county or division, shall be entitled to be put out as apprentices or hired servants by the person or persons appointed to the management of the said poor, with such rewards as hereinafter mentioned, by writing under their hands, according to the Form No. and No. in the Schedule hereunto annexed, or to that or the like effect; and that every male child of the age of fourteen years, and every female child of the age of twelve years, or at an earlier age if it shall be thought fit, may be bound apprentice to any reputable person in Great Britain, to be taught any art, trade, mystery, or occupation, or any handicraft business or manufacture, which they are respectively fit for, for any term not exceeding seven years, and so that the term of such apprenticeship shall not endure beyond the age of twenty-one years for male children, and of nineteen years for female children, and in any employment of husbandry for such time not less than three years for such child or children respectively, and as the major part of the persons hereby authorized to bind such apprentices shall think most suited to the circumstances of such respective child or children, or until such child or children respectively shall attain the ages, if a male, of twenty-one years, or, being a female, of nineteen years; or such persons respectively may, if they shall think the strength or capacity of any male child or children suited thereto, cause him or them to be employed and bound as apprentices in the sea service for the time and in manner aforesaid, and according to the laws in force for binding poor apprentices to the sea service; and that every writing made in pursuance of this Act shall be as binding as an indenture between the master, mistress, and apprentice, and the guardian of the poor for

Digitized by Google

the county or division confirming the same, and his successors; and shall in all respects have the same effect, and operate as an indenture for apprenticing poor children, whose parents are not able to provide for them, made and executed in conformity to any of the laws now in force relating thereto, and shall be enforced in like manner by the guardian of the poor for the county or division for the time being, according to the directions of this Act herein given, with relation to any property belonging to any parish in such county or division. And all and every child or children, of the respective ages before-mentioned, or at an earlier age if it shall be thought fit, may be hired to any reputable householder or husbandman in Great Britain by such persons as aforesaid, with such allowance of the visiters as before is mentioned, to be domestic or menial servants in husbandry, housewifery, or otherwise, for any term not less than one year, or until such child or children shall respectively attain their ages, if male, of twenty-one years, or, if a female, of nineteen years, or until marriage, at such competent rate of wages as shall be in that behalf agreed upon; and at the end or other expiration of such hiring, may be taken into employment in the said school or schools of industry, or otherwise, under the authority of this Act, or may be again hired for such term as aforesaid, and so from time to time, until they shall respectively arrive at such ages as aforesaid. And that, upon every such binding or hiring as aforesaid, the persons joining in such contracts, on the behalf of such poor apprentices or servants, shall take care that they shall be sufficiently clothed and maintained according to their respective wants and conditions, and that the wages (if any) to be paid to them shall be paid to or laid out for the use and benefit of such child or children: and the said person having authority to join in making such contracts may, with such consent as aforesaid, pay out of the funds provided for the relief of the poor by virtue of this Act, or any the laws now in force, such reasonable fee or consideration for the binding out of such poor apprentices as they shall deem necessary; and may also provide such poor child or children, so bound out as apprentices or hired as servants, with such suitable clothing as shall be necessary, at the expense of the parish or united parishes, and as a reward for the good behaviour of such child or children during their said employment in such school or schools of industry, or other places aforesaid, in which they shall have been employed before the commencement of such apprenticeship or hiring as aforesaid; and that such fee or consideration so paid or contracted for, or such suitable clothing so provided, shall not be charged or chargeable with any stamp duty whatever."

By this clause every child of a certain description is declared to be *entitled* to be put out as an apprentice or hired servant, with certain advantages not specified.

This clause being but a *frame*, and the picture not hung up (but why not hung up?) a criticism on the picture may appear chargeable with precipitation.

Reasoning under this disadvantage, what occurs to me on the subject is as follows:—In the matter of apprenticeship, three points may be distinguished; the legal subjection during the continuance of the relation thus contracted—the exclusive privileges attached to that relation by a particular law in a numerous class of instances—and the comparative rank in life it confers in a still more extensive class of instances as compared with the condition of an unprivileged hand occupied in ordinary labour.

1. Of the utility of the legal subordination my conception is the same with that which stands apparent on the face of the bill. Conceiving of it as calculated to operate in a certain degree as a *source of instruction*, and in a yet higher degree in the still more important function of a *security for good behaviour*, every accession to the number of the instances of its existence presents itself to me in the shape of a public benefit.

2. As an instance of the monopoly in trade, I know of but one opinion relative to it—oppression, in the instance of the individuals excluded from the occupation thus engrossed—excessive earnings, in the instance of the partakers of the privilege; whence the alternation of penury with excessive plenty in a rank of life where sensual excesses supply the demand for occupation in a vacant mind:—enhancement of prices in every article connected with the subject-matter of the monopoly:—such appear to be the consequences to the several parties interested—to individuals excluded, individuals favoured, and the community at large.

3. As a source of exaltation, so long as the superiority it confers is confined to that which is the natural result of the improvement and augmentation of natural powers, the situation presents nothing but what appears to be the unavoidable consequence of any such improvement—a consequence beneficial, perhaps, in some points of view, pernicious in none: but so far from being either necessary or useful, it seems pernicious, to wit, on the accounts just mentioned, if in any respect it be the result of coercive law. But this property is what may be attributed to it in either of two cases; if a man be excluded from the situation by a direct prohibition to engage in it, or if public money be employed to pay a man for helping a boy to get into it; in the one case the coercion takes the shape of restraint, in the other case of compulsion; in the one case the monopoly is a direct one, in the other case an indirect one, produced by an addition made to the general mass of taxes.

Considered as confined to the lowest, that is, the lowest paid class of working hands, I

Digitized by Google

see an uncertain chance of improvement, in point of morality, to be bought at a certain expense. I am not disposed to underrate morality, but in the present instance I am not able to obtain what to me appears a requisite assurance that the chance purchased will be worth the price. In the instance of each apprentice thus taken in consideration of so much public money, I want sufficient means of assuring myself in relation to both of two points; that an apprentice would not have been taken without the money, and that the portion of morality paid for by the money will be worth it. In the first case, the business seems exposed to the following dilemma: if the fee be small, it will not be sufficient to turn the scale; it will produce no more apprenticeships than would have been produced without it: if it be large, it opens a proportionably wide door to profusion and abuse. In the second case, the fee, large or small, holds out to improper hands a temptation, which without it does not exist. He who takes the apprentice without money can propose to himself no other advantage than what is to be derived from the service; and thence the instruction, employment, and morality of the apprentice. He who takes the apprentice with and for money, may have employment for the money without having any for the apprentice.

All this while, let it not be forgotten, there are existing laws under which the taking of apprentices, in the employment in question, without money, is compellable, and which are more or less enforced. Hence a source of complaint and jealousy and injustice, real or imagined, while one man in a parish is compelled to do for nothing that which another man is paid for.

Under these doubts, though really they are but doubts, with regard to the value of the purchase, the *vis inertiæ* would, I think, if it depended on me, be sufficient to keep the money in my pocket, especially while there are so many purchases to be made with it, the value of which is beyond doubt; among which the purchase of so much security in respect of property, as is constituted by the leaving the money in the pockets of the contributors, ought not to be forgotten.

To judge of the clear benefit resulting from this or that application of a sum of money, compare the gross benefit with the mischief of the most mischievous tax—for instance, the taxes operating in prohibition of justice. This test I consider as a principle in finance, and it is, for aught I know, a new one:—of the expenditure that will abide it, the utility ought, it should seem, to stand pretty clear of doubt.

If the occupations into which it is proposed to force hands by public money be of the high paid class, the question of the expediency of the provision presents itself under a different shape. If the individual thus forced into apprenticeship in this class by dint of the fee be one more than would have existed in the class without the fee, this addition, as far as its influence extends, goes to the reduction of the monopoly, and tends accordingly, though in a microscopic degree, to the diminution of the mischiefs of it. If, on the contrary, he makes no addition to the number of the sharers in the monopoly, but only occupies the place of some other individual, who, but for the fee would have occupied it, then no effect is produced, but the throwing away of so much money.

Reasons for apprehending that the addition upon the whole may be rather apparent than real, are not wanting. This expedient for forcing hands into the class of employment in question has no tendency to increase the quantity of employment in the species of employments belonging to that class: its real tendency is of the opposite kind, to send hands to the employment, not employment to the hands. But viewing the whole mass of employment, of the species in question, in the lump, while the demand for the work—for the produce of the employment—is not increased, no fresh hand can be forced into the employment in question without forcibly keeping some other out of it. The individual who would thus have been kept out, in any instance, by force of the bounty—the individual who but for this bounty would have been received into this extra paid and superior class—is more likely to be one belonging to that same class than one belonging to the inferior class. For no reason can be assigned why the superior class should not in the way of natural increase be as capable of keeping up its numbers as the inferior class; and the offspring of the superior class has better opportunity of an introduction into his own superior class than is likely to fall to the share of a member of the inferior class.

If this then be the case, it seems to follow that as often as the child of the labourer or impoverished tradesman thus gets a lift, the consequence is, that some other child of a tradesman, by finding the condition of the tradesman shut against him, must receive a fall.

Let me not be understood as pleading in favour of any forced system of casts; all I contend for is a system of equal and unexpensive liberty. Where no partitions are set up or kept up by the hand of law, good fortune and merit on the one hand, ill fortune and improvidence on the other, will keep up every degree of mixture which the interests of hope and industry can require.

The conclusion seems to be, that in this instance, as in the other, no advantage is near so certain as the expense.

If the bargain,—natural advantages and bounty taken together—be worth making, candidates for a share in it are not likely on either part—on the part of master or apprentice—to be wanting. The individuals it lies open to are "every child who shall *at any time* have received employment by virtue of this Act, and shall obtain a certificate of his or her

Digitized by Google

good behaviour during the time of such employment, according to the form, No. ( ) in the schedule annexed." If then £5, for example, be the apprentice fee, £5 may be the price of a day's service. While a patron exists in whose judgment a douceur of this kind, whatever may be the amount of it, may be worth the acceptance of an obsequious client, howsoever it be with other manufactures, the manufacture of apprentices need not stagnate. Whether an article of this sort be worth throwing into any such fund as the election fund, is a question that must wait its answer till the picture above spoken of has been inserted into its as yet vacant frame.

The facility thus provided might have been regarded and intended in either of two lights: in the light of a distinction or reward, or in the light of a general benefit. In either case it may have been regarded as an instrument of morality, though exercising its operation at a different period in the two cases: in the one case, at the period previous to the apprentice-contract, acting upon the individuals concerned in the quality of candidates for the advantage; in the other case, at the period subsequent to the formation of the contract, acting upon them in the quality of persons subject to the powers conferred by the contract.

In which of these two lights it was considered is what I do not clearly see: the question is not altogether immaterial: for the purposes do not exactly harmonize, at least in the quantity of expense they call, for there is a considerable difference; in the one way the magnitude of the benefit is in the direct ratio, in the other in the inverse ratio of the numbers on whom it is conferred. The facility of admission being so great, the attainment of the advantage being so easy, it follows that unless the facility were the result of inadvertence, the direct general benefit rather than the indirect one resulting from the operation of the distinction in the character of a reward, was the object principally in view; for the certificate of general good behaviour being a matter of course, unless where some very flagrant and special instance of ill-behaviour can be proved, can scarcely be considered as drawing any other than an accidental line.

The difference between the quantity of money that may be requisite in the two cases is such as may render this point, minute as it may seem, worth settling. Call the average number of parishes in an union five; this for the 10,000 parishes in England (Wales included) makes 2000 unions. Annual average number of boys and girls capable of being put out apprentices in each union, suppose ten, 20,000 in the whole. Annual total amount of apprentice-fees at £5, £100,000; at £10, £200,000.

Suppose distinction and reward to be the object rather than immediate and universal benefit, then instead of the five, one apprenticeship for each five in the course of the year will (let us say) suffice: in this way the expense would be reduced from the £100,000, or the £200,000 to £20,000 or £40,000.

The refusal of the certificate will be a stigma: fewer or more, what is to become of the individuals thus stigmatized? Who will give them employment? Who will have anything to do with them that can help it? They who have been thus pronounced unfit either for apprenticeship or service? Those for whose good behaviour security is most wanted, these are they in whose instances the security is refused. Once more, what should we say to that *pharmacopœia* which, for those who are in good health, should provide *aurum potabile*, and other expensive drugs; but for those who are sick, nothing? whether *found* sick, or *made* sick by it as here.

The considerations thus brought under review will be apt to appear minute and somewhat vague; but that the utility of a provision should turn upon considerations to which those epithets are applicable, and that too a provision by which public money is scattered without being weighed or counted,—is not that a circumstance sufficient of itself to present the provision in a questionable shape?

Is the supposition above made of the ten apprenticeable youths per union to be regarded as a reasonable one? This is but one out of a multitude of arithmetical questions all equally pertinent, which may have presented themselves in crowds under this as well as every other of the clauses touched upon. For all such questions, I must confess myself to have but one answer—utter ignorance. The blame, however, if I may venture to say as much, lies not with this humble comment, but with the text, which, while heaping up so immense a mass of bounty, knows nothing of the numbers of those by the number of which that bounty is to be multiplied, nor consequently of the expense.

General Remarks on Home Provision.

The grant of this indulgence is limited, it is true, to the case of a man's being "a person entitled to the benefit of this Act," but how this point is to be ascertained is a matter which I am much inclined to believe will be found beyond the comprehension of those who are to judge—it most certainly is beyond mine—and, in the meantime, the family must not be left to starve.

But for all those bounties a fund, it may be said, is provided, and that an ample one, the fund arising from the whole stock of as yet unemployed ability, now for the first time to be turned to use.

To this I feel myself compelled to make two answers: one is, that I doubt the real produce of this stock when put in motion will turn out to be little or nothing, to say no worse; another is, that, be it ultimately what it may, it cannot for a long time be in readiness to honour the drafts thus largely made upon it.

Digitized by Google

On the first of these points I shall have occasion to touch separately; the other is more particularly to the purpose here.

The impediments to the union of profit with relief-employment, and thence all profit to be drawn from employment on the one hand, and relief and the distribution of the bounties on the other, are these:—

1st. That the distribution of the bounties is to commence at the very commencement of the Act, viz. on the 10th of July in the present year. But, by section 10, it is not till after the 29th September following that the first link in the long and complicated chain of causes and effects, on which the commencement of the means of employment is to depend, can be begun upon; a work which, where it finds willingness on the part of the great variety of persons whose co-operation is necessary, can scarcely do otherwise than take up years; and which in those districts in which there is any want of such necessary co-operation will, so long as such want continues, not be begun upon at all.

Meantime the distribution of the bounties is running on full swing, for immediately "*from and after the commencement of the Act*" as aforesaid, it begins as soon as "any father" is "entitled to the benefit thereof according to the provisions hereinafter-mentioned."

For the purpose of entitling a man to the benefit of the Act there is nothing anywhere specified, from the beginning to the end of the Act, unless it be the qualification of wanting relief, the qualification spoken of in the 16th section; nor yet to disentitle a man, but the act of refusing employment or instruction, the disqualification specified in section 21. On such refusal a man is made to stand precluded not only from the "benefit of the Act;" in short, not at all from the benefit of the Act by name, but from relief itself, from every species and degree of relief whatever.

But till a man has made the refusal in question the disqualification does not take place, and till tender shall have been made refusal cannot have taken place. But tender of employment cannot be made till the means of employment exist; that is, till the establishment for affording employment has been set upon its legs. The only assignable disqualification then cannot take place in any district till nobody can say when, while the only assignable qualification, the wanting relief, exists in itself already, and exists in the shape of a qualification under the Act, as soon as the Act itself comes into existence—that is, on the 10th of July next.

Another circumstance that stands in the way of the coincidence between disbursement and supply is the impracticability of performing the condition on which the bounties are made to depend, viz. the acceptance of the instruction and employment, an impracticability that will be found to take place in many cases. That the children are not to be lodged in the schools in which they are to work seems pretty clear; that the adults are to be lodged in any such common dwelling does not appear. The districts, though not upon anything like what I have termed the large-establishment scale, will, so it seems, consist of a considerable number of parishes laid together. The greater the number of parishes that may come to be laid together, the greater the distance between the school wheresoever situated, and the houses of the greatest part of the number of the scholars, who are to be of all ages from five years upwards. Here then comes a sort of dilemma.

If the district is small, the expenses necessitated by those parts of the establishment, of which the expense is incapable of diminution, will be so great as to cut out every possible profit that could be made out of the earnings of so small a number of working hands. If the district is large, whether from the proportion of the time consumed on the journey to and fro, or from inability to perform it, or inability on the part of the parents or managers to enforce the performance of it, the labour of a great part of the intended scholars will be out of the reach of being collected.

The exclusion thus put by distance in the instance of infancy is co-extensive, it is evident, with the inability, whatever be the source.

But wherever the performance of the condition meant to be annexed to the receipt of the bounty is or is deemed impracticable, and that without any supposed fault on the part of the intended object of the bounty, the condition sinks of course, and the bounty stands alone.

After what has been said on topics of so much more weight, a hint of this topic will probably be deemed sufficient; to follow it up and apply it in the way of calculation would be matter of some difficulty, and occupy more space than can be allotted to it here.

A third reason is, that from the mode of payment a large proportion of the hands must be fully paid, while their work is worth nothing, so far from being worth enough to pay for its own charges. The mode of payment prescribed, and prescribed without limitation or exception, is payment by the piece. I do not say that this is not the best mode of payment in many instances, perhaps in by far the greatest number of instances; but in some instances it is impracticable, because the degree of advance made in quantity of work done is unsusceptible of mensuration; in other instances it is apt to be disadvantageous, on account of the difficulty of ascertaining the goodness and quality of what is done, and in proportion to the difficulty of ascertaining quality will be the certainty of bad work; and work may in many instances be so bad, as not only to afford no profit but to destroy the value of the materials. But in all instances there will be a certain period, the period of instruction, during which, with all imaginable diligence and honesty on the part of the workmen, the work will be worth nothing. But while the work is ac-

Digitized by Google

quiring its value the workman must live, and will be made to live. Accordingly, by section 19, if "the sum allotted for the support and maintenance" of the family, whether under the name of wages, earnings, or allowances, proves deficient, the deficiency is to be made up. Payment by time, instead of the piece, will then take place in the first instance through necessity, and, having taken root, the interest which idleness will give a man in its continuance will render it not very easy to eradicate. I do not dispute but that it may in most instances be eradicated under a proper system of regulations and inducements adapted to the nature of the case; all I mean is, that I see no great probability of the growth of any such good economy, under the auspices or rather the rod of a system of legislation, which after enacting that, practicable or not practicable, the working hands, that they may do so much the more work, shall be paid according to what they do, enacts, in the same breath, that they shall go on for an indefinite time, receiving whatsoever may be thought proper to allow them under the name of maintenance, although what they do shall continue to be worth nothing; and this without so much as the inconvenience of quitting their own homes.

Had the application been left to individual discretion, a hint, coming from so high a quarter, might as a hint have been of no small use; but the precept being thus peremptory and unbending, its tendency would rather be to bring the principle into discredit than to promote the use of it.

Essay on the question,—Who are the persons for whom the several bounties provided by this Bill are intended?

When a system of bounties so various in its appearance, so vast in its magnitude, and in its apparent burthensomeness to the public so formidable, is provided, a natural question is, Who are the persons destined to partake of it? The answer I must confess myself unable to give: had I been able, it is the answer I should have given, not this essay, or, rather, as the question would have been needless, the question would not have been started.

"The benefit of the Act:"—the word *benefit*, as employed with reference either to the Act in general, or to some part of its contents, occurs either in the singular or the plural number in nine sections: in five of them (1, 2, 3, 19, 20) in the singular; on which five occasions such of the effects of the Act as are considered as being of a beneficial nature are considered as comprising one entire undistributed, undiversified mass of benefit: in two others in the plural (sections 4, 17); and in the two remaining ones the benefits spoken of are spoken of as resulting from particular provisions therein mentioned, and not as resulting from the entire body of the Act. In neither of these two sections, therefore, is to be found the benefit of the Act. The first time the phrase occurs, which is at the very opening of the Act, a sort of promise is made to give the elucidation here sought: "*Any father entitled to the benefit thereof,*" viz. of this Act, "*according to the provisions hereinafter mentioned.*" The accomplishment of this promise, if it be one, is unfortunately forgotten. Provisions there are enough which speak of this benefit, which allude to it, which, like this provision, speak of it as indicated, but there are none that indicate it.

Had the task been mine, having settled with myself who the persons were whom it was my view to benefit, my first care I must confess would have been either to have found or to have made for them a *name*. This name, and no other, is the name I should have called them by as often as occasion recurred for speaking of them.

Having fixed a name for them, little should I think of discarding that name for any circumlocution, much less a circumlocution so enigmatical as that contained in the words, "the persons entitled to the benefit of this Act:" a designation of this sort may be pleasant in a riddle; but, whether pleasant or no, is certainly not profitable in an Act of Parliament.

If it seemed to me a fit occasion for a riddle, I should, at any rate, think it incumbent on me to give the key to it; and, how little soever conformable it be to the usage of riddles, I would give the key along with the riddle in the first instance. I would say, *the persons entitled to the benefit of this Act* are *such and such persons*. But it is evident how much better it would be to say, simply, *such and such persons* at once, leaving the benefit to speak for itself. To state who the persons are who are intended to be *bound* by an Act is matter of necessity—of equal necessity and facility, because when new obligations are meant to be imposed, if nobody is bound by them, nothing is done. But to state and discriminate who the parties intended to be benefited by it are, is, perhaps, never a necessary task, and would seldom be found an altogether easy one. The very existence of benefit in any shape may be problematical; and, supposing it ever so undisputed, the wider it is in its extent, and the more pregnant in its consequences, the more difficult it is to trace. Should the benefits of this Act prove such as the benevolence of the authors of it has been expecting to see, and such as the author of this essay on it would most sincerely wish to see result from it, the more rich the benefit, the more difficult to discriminate. Of this Act it might truly be said as is said by the poet of, I forget what else,—

> Æquè pauperibus prodest, locupletibus æquè,
> Æquè neglectum pueris senibusque nocebit.

So diversified, so extensive, so lasting, so prolific, the benefit, it would be difficult to say

Digitized by Google

whether rich or poor, old or young, enjoyed the largest share of it.

But little as it seems necessary in the text of an Act to make mention of its benefits, what seems indispensably necessary is to state, and that in the clearest terms, who the persons are who may be considered as entitled to such of the benefits or supposed benefits of it for which there is anything to be done: in other words, how a man may know whether he is or is not entitled to whatever he may be disposed to claim under the notion of its being a benefit; and, consequently, if anything for that purpose is to be done, what that is which becomes thus requisite to be done.

The necessity of being thus explicit will appear the more indispensable when it is considered out of what description of persons those for whom the most immediate and largest share of the benefit appears to be intended are to come—the class of all others to and for whom information of every kind is most wanting and most necessary. In such mouths a most natural, and surely not altogether an unreasonable, question is, If the writer knew which of us he meant, why did he not tell us, and if he did not, could he expect that we should?

Whatever situation in life be considered, that of the poor or lowly who are to receive the main benefit of the Act, or that of the exalted or magistrates who are to dispense them—of this, as of every other Act, all and singular the benefits depend upon its being understood, and its being understood depends upon its being intelligible.

Whatever is given in such abundance by the Act—head-money for children—supplemental wages, in default of ability and industry—cow-money—is expressly confined to those who are entitled to the benefit of the Act. Who are they? I don't know. Where is it said who the persons are that are to be considered as entitled to this benefit? Nowhere.

In five of the Sections, as we have seen (Sections 1, 2, 3, 19, and 20,) the beneficial result of the Act is spoken of as one undiversified, indivisible, or, at least, undivided mass, and then the persons in question, the persons alluded to, are spoken of as entitled to *it*, viz. to the whole of it, insomuch that nobody who has any part of it can have, or at least is intended to have, less than the whole of it.

In two other Sections (4 and 17) benefits in a countless, or at least uncounted, multitude are spoken of as flowing from the Act; and now a man may have some of them without having others. By Section 4, "no person shall be excluded from parochial relief or any of the benefits of this Act" on any of the accounts there specified.

By Section 17, employment and instruction—employment and instruction, two most desirable benefits, are destined for certain persons. But, to come in for his share of the benefits, it is expressly provided that a man must be "entitled to all the benefits of this Act." Before he can have these two, or either of them, he must take out his title to every other. Before he can obtain the smallest particle either of employment or of instruction, this vacant, this neglected, this uninstructed, this altogether unfurnished mind must possess a degree of instruction—I fear to state it—a degree of instruction, with respect I speak it, such as does not appear to be possessed by even the legislator himself—a degree of instruction (I much fear) beyond the power of any man that lives. He must have comprehended the Act; comprehended it in all its parts, traced it through all its consequences, investigated and catalogued without exception "*all* its *benefits*;" and this as an operation preliminary to the inquiry whether it be his good fortune to be entitled to any the smallest share in so rich a prize.

Confessing myself not possessed of anything like the degree of instruction exacted with so little mercy of the forlorn objects of the intended bounty, I will endeavour, to the best of my ability, to make out the list of these benefits.

I. Articles which in themselves would appear to be entitled to be comprehended under the list of benefits, though not expressly characterized by that appellation, but rather expressly excluded out of it.

1. Benefit of receiving head-money for supernumerary children.

2. Benefit of receiving supplemental wages at the public charge, in addition to such wages as individuals will give.

3. Benefit of receiving cow-money—money to buy a cow—Section 3. This is, however, expressly mentioned as neither constituting the benefit of the Act, nor so much as any part of it; since the being "entitled to the benefit of the Act" is mentioned as one of two conditions which must concur in order to give a man his chance for receiving this species of bounty. The same observation is equally applicable to both those other clauses.

In one sentence our inquirer might be tempted, for a moment, to fancy himself on the point of possessing the object of his wishes,—but disappointment would be the termination of his hopes. In Section 68, after providing that "no person shall be excluded from parochial relief, or any of the benefits of this Act, on account of the possession of" certain property therein described, it goes on and adds, "but that every person in the situation and condition before-mentioned, and not able, from other circumstances, to maintain him or herself, or his or her family, shall be entitled to all the benefits of this Act." Absolutely? If this be the case, then, the problem is solved. Is it, then, *absolutely*? Alas! no; but *comparatively* only, Section 68, "as fully and effectually as if such person was not possessed of such property as aforesaid." Property, or no property, so the property be not above the mark, a man will be equally entitled to these bene-

Digitized by Google

fits: but still the question remains unanswered, *What must I do to be entitled?*

If this concluding reference had not put out the light which for a moment appeared to show itself, the introductory one would have done the business,—would have been sufficient to render the obscurity equally impenetrable. To be entitled to all the benefits of the Act, it is necessary a man should be in the situation and condition above-mentioned: and in travelling over the three preceding sections to see what that situation and condition is, it appears to be the situation and condition of him who is entitled to the benefit of the Act. Who, then, is a person entitled to the benefit of the Act? Who? why a person entitled to the benefit of the Act.

In one place (Section 16) a case is mentioned in which a certain class of persons therein specified may receive certain advantages therein specified; and a sort of person therein also specified "shall," (it is said,) with the consent of two other persons therein specified, (two justices of the peace in the district,) "take order for" the administering to them these benefits. This, though something like light, and the most like it of anything that is to be found in the whole compass of the Bill, is not, however, *that* light. The advantages there spoken of are special in their nature, the description of them being contained in, and confined within that single clause; neither are they spoken of under the name of *benefits*. They are benefits, if to be instructed, and employed, and maintained, are benefits: but they are not therein spoken of under the name of benefits; much less as the benefits comprising *the* benefit of the Act.

If they were, we might cry with Archimedes, ευρηκα, we have found it: for to these benefits the statement of the title is as explicit as could be wished. Who are the persons entitled to these benefits?—Answer, *All persons wanting relief.* If these were the same persons as those alluded to by the expression, *any person entitled to the benefit of this Act*, with what advantage, in point of brevity as well as precision, might the former expression have been substituted to this latter.

If, then, it be really the case that by the words "every person entitled to the benefit of this Act," is meant neither more nor less than "*all persons wanting relief*," the secret is out, —the mystery is unravelled. But if all persons wanting relief are really to be let in, why are they to be thus muffled up? why all this pains to put them in masquerade? Throwing away the surplusage about *benefits* and *titles*, why not say simply, "All persons wanting relief;" or even more simply still, "all persons;" for if relief is to be had in such quantity, and on such terms, it may be difficult to say who it is that will *not* be "*wanting*" it. The adjunct *wanting* relief, may be the more easily spared and added to the heap of discarded surplusage, inasmuch as if a man wants relief it is intended he should have it, and if he does not want it he will not ask for it.

Unfortunately we are still at sea. The hope of a safe landing, though at such an expense of words, and after so much buffeting from clause to clause, is still but a pleasing dream. The want of relief is not sufficient to entitle a man to the benefit after all; for in the 19th Section the case is put of a man wanting relief; and it is, if not expressly stated, yet necessarily implied, that a man may want relief, and yet not be a person entitled to the benefit of the Act, "in case (says the Bill) the person wanting relief shall be a person entitled to the benefit of the Act;" so that now we are as much at a loss as ever.

Moreover, in Section 3, the being "entitled to the benefit of this Act" is one thing, and the wanting relief another; for both conditions, it is there expressly provided, must concur, before a man can be admitted to receive the bounty there provided, namely, money to buy a cow.

Another thing which we learn from that same clause concerning the benefit of this Act, is, that the receiving money to buy a cow does not constitute the benefit of this Act, nor, indeed, so much as any part of it, since the benefit of this Act is a distinct thing, which a man must absolutely be entitled to before he can take his chance for receiving this money for the purchase of a cow.

I said but now, *if this clause is to be trusted to;* but that this clause is not altogether nor exclusively to be trusted to, will appear from another section to which, however, it makes no reference. Should any one, in the course of his pursuit after the true intent and meaning of the Bill, be led to take any such stride as that from the 16th Section to the 21st, he will there find it written, that in regard to relief, if that be the benefit, or among the benefits of the Act, in order to be entitled to this benefit, for such it will not be denied to be, whatever may be thought of the benefits of the Act, it is not altogether sufficient to be a person, nor yet to be a person wanting relief; for that there is a sort of person who, be his want what it may, is not to be considered as "entitled to any relief from any parish or united parishes." —"No poor person who shall refuse any work offered to him or her under the authority of this Act, which he or she is able to execute, or to receive instructions for executing such work, or who shall not, on request made, according to the directions of this Act, permit all or any of his or her family, who are able to work and cannot otherwise support themselves, to be employed under the authority of this Act, shall be entitled to ask, demand, or receive any relief . . . . except as hereinafter is provided."

Here, if anywhere, one should have thought was the place for speaking of the *benefits of this Act;* in which case, if we had not learnt in direct terms who *are* entitled to those bene-

Digitized by Google

fits, we should at any rate have learnt who are *not*, which is one step towards it. Instead of that we have the very general and extensive word *relief*. Thus much the mention of the word *relief* will be apt to do, to put a man in mind of the benefits of the Act; but this is to raise doubts, not to solve them. Is *relief* precisely the same thing with the benefits of this Act? It covers a great deal of the same ground certainly; but, if tried in the geometrical way of superposition, we should find it, in some parts of its extent perhaps, overhanging the benefit, in other parts, at any rate, falling short of it. The advantage of being put out apprentice can hardly be termed relief; and yet this, wherever the Bill has more benefits than one belonging to it, is surely one of them. Instruction, if instruction be a benefit, is another of the benefits of the Act; yet this is certainly not comprehended under relief, for it is expressly put in contradistinction to it: no instruction, no relief; and so with regard to employment. Besides, in the cow-money clause, (Section 3,) as we have already seen, the benefit of the Act is one thing, relief another thing; the benefit is a sort of thing he must *be entitled to*, the relief a sort of thing he must *want*, in order to take his chance for getting the cow-money. Yet, while it thus falls short of the full measure of the benefit or benefits of the Act, it extends, or at least wears the appearance of extending, beyond the Act, for it extends to whatever relief can be found to be provided by all the existing Poor Laws put together. This sends our inquirer upon the hunt over the whole body of the Poor Laws, for the purpose of picking up the several crumbs of relief, the several constituent elements of the general mass of relief provided by those laws, for the purpose of taking measure of the aggregate, and comparing it with the aggregate mass of the benefit or benefits provided by this Act.

It may here occur, that in proportion as the difficulty of finding out receivers for the bounty increases, the arguments that turn upon the alarming magnitude of the bounty will be losing their force; and that, if, after all, no claimants for it should be found, the mischief of which so much has been said in this comment will be as ideal as the benefit of which so much is said in the Act. But not to mention that the benefit of a parliamentary revisal is yet in store, let it not be thought that, because the draftsman has not perfectly succeeded in finding out the objects of his bounty Bill, there may not be others who will find them for him.

"Hunger," says the proverb, "will break through stone walls;" it will find still less difficulty in making its way through mists: and whether it be from humanity, (for humanity, howsoever misguided, ought not to be robbed of its name,) whether it be from humanity, or from some of the less pure motives above hinted at, the efforts of those who may conceive themselves invited to put in their claim to the bounty, are not likely to pass everywhere unseconded by the corresponding efforts of those who may conceive themselves called upon to dispense it. In a word, the obscurity may plague the magistrate, but it will not prevent the mischief. Obscurity is the source of every mischief; it is a remedy to none.

The conclusion is, that I am altogether ignorant who they are that are entitled to the benefits of the Act, and how to find them; and in this I am altogether positive. Should anybody else be more fortunate, (it is not easy to be more diligent,)—any one of the million, for example, who have been set a gaping for these benefits,—let him accept my congratulations and my envy: I envy him and give him joy.

Conclusion.

To give a short specimen of prolixity, to give a clear picture of confusion is no easy task. One efficient cause of unintelligibility pervades the whole Bill. Open it where you will, you find a benefit or supposed benefit spoken of as designed for somebody. Who is that somebody? The sort of person for whom the benefit is designed. Question. What is to accommodate? Answer. To accommodate is to accommodate. Explanation. As if I were to accommodate you, or you were to accommodate me. Question 2. Who then is the person to be accommodated? Answer. The person to be accommodated. Explanation. The person entitled to the accommodation given by the Act, the person for whom the benefit of the Act is intended. It would be something, if there were but one benefit, or *soi-disant* benefit running through the whole; unfortunately, there are as many benefits or supposed benefits almost as clauses, with as many different sorts of persons, into whose laps they are showered down by the hand of the learned draftsman, who, through the whole of its vast expanse, may be seen dealing out his favour like Merlin in the masquerade, in the character of Fortune.

Howsoever it may be with regard to contrivance, there is no want, at least, of felicity in the result. A composition of such bulk and such texture is examination proof; the lightest comment would find itself sunk down without redemption to the very bottom of the gulf of oblivion by the ponderosity of the text.

When observations to this effect, having this or any other production of the same pen for their subject, are made, (and the occasion presents itself as often as any such production presents itself,) one answer is ready, and a distinction is at hand. How much the world of industry is a gainer by the division of labour is well known: it can be no secret to any one who has ever opened a page of Adam Smith. It is thus, that in one branch of the department of the revenue, the province of the cocket reader has been separated from that of the cocket writer; it is thus, that in a higher branch of the same department, the offices of statute

Digitized by Google

writer and statute interpreter, with or without that of statute understander annexed, have undergone a similar separation; the latter having, by an arrangement of some years' standing, been allotted exclusively to the Noble and Learned Lord who presides so worthily in the Court of King's Bench. At the end of a certain number of months or years, and at the end of a certain number of hundreds of pounds a-piece, the poor of this country, such of them as have more money than they know what to do with, may know by a knock at the noble interpreter's great gate, which of them this and that benefit was intended for: and then it will be, as if this or that mountain of words had been left out, and this or that word or two were inserted, which, to a plain and unlearned understanding, might as well have been respectively left out or inserted in the first instance.

This being the case, so long as Westminster Hall, the great mine of certainty, is open to all who have a golden spade to dig in it with, it seems perfectly well understood, as well at the Treasury as in Westminster Hall, that whether a Bill or an Act be or be not intelligible in the first instance is a matter of indifference. To enrich it with a proper quantity of surplusage is a necessary work: but to drop into it a single grain of original intelligibility would be a work of supererogation. *Certum est*, says a maxim of law, *quod certum reddi potest:* certain is that which certain can be made. The capacity of being rendered intelligible is an attribute that constitutes the *proprium in modo*, as logicians term it, of an Act; since, whether it has or has not a meaning of its own, the Court are bound to construe it, that is, to find a meaning for it; so that, in fact, it would be but an idle sort of business to be at the pains of giving a meaning to a composition, which, whether it have a meaning or no, can never be in want of one.

Carrying modesty to excess, it assumes no other title than that of "*Heads of a Bill*," as if there were not such thing as a word of surplusage to be found in it. On the contrary, so rich is it in surplusage, that a man might find enough in it and to spare, not only for a Bill or for an Act, but for a whole session full of Acts; and as to heads, a head is the thing of all others of which there is the least trace or appearance to be found.

In certain circumstances, to denominate is to characterize; to class is in effect to criticise. This and this alone is the sort of criticism which a work of the nature, I mean of the bulk and texture, of that which I have before me, will admit of.

With this single dissertation, the reader is now let off; want of the necessary time, despair of attention, despair of fruit; to these he is indebted for his dismission, even at this late period: certainly not, by any means, to any want of matter in the text. Fifty is the number of pages here bestowed on it, considered in this limited point of view. Considered in the same point of view, the same or thereabouts is the number of volumes that might have been bestowed on it, and with about equal cause. The same is about the number of volumes that may at any time be bestowed with about equal cause, on almost every law, while the form in which laws have hitherto been expressed continues to be observed. Reform in the mode of composing the laws, reform in the laws considered as laws, is reform in the instrument, in the very instrument by which all the work is done. Reform in the Poor Laws, or in any other branch of the laws, is but a reform in this or that branch of the work. Bad instruments can make nothing but bad works. Reform in the instrument, how remote soever in apparent use, is, in fact, prior in importance and in necessity to any reform that can be conceived to be called for in this or that corner of the field of legislative labour.

Digitized by Google

Digitized by Google

THREE TRACTS

RELATIVE TO

SPANISH AND PORTUGUESE AFFAIRS;

WITH A

CONTINUAL EYE TO ENGLISH ONES.

TRACT, No. I.—LETTER TO THE SPANISH NATION ON A THEN PROPOSED HOUSE OF LORDS. (ANNO 1820.)

TRACT, No. II.—OBSERVATIONS ON JUDGE ADVOCATE HERMOSA'S PANEGYRIC ON JUDICIAL DELAYS; ON THE OCCASION OF THE IMPUNITY AS YET GIVEN BY HIM TO THE LOYAL AUTHORS OF THE CADIZ MASSACRE, A COUNTERPART TO THE MANCHESTER MASSACRE: EXPLAINING, MOREOVER, THE EFFECTS OF SECRECY IN JUDICATURE.

TRACT, No. III.—LETTER TO THE PORTUGUESE NATION, ON ANTIQUATED CONSTITUTIONS; ON THE SPANISH CONSTITUTION CONSIDERED AS A WHOLE, AND ON CERTAIN DEFECTS OBSERVABLE IN IT; IN PARTICULAR, THE IMMUTABILITY-ENACTING, OR INFALLIBILITY-ASSUMING, THE NON-RE-ELIGIBILITY-ENACTING, THE SLEEP-COMPELLING, AND THE BIENNIALITY-ENACTING CLAUSES.

BY JEREMY BENTHAM, ESQ.

FIRST PUBLISHED IN 1821.

Digitized by Google

Digitized by Google

THREE TRACTS

RELATIVE TO

SPANISH AND PORTUGUESE AFFAIRS;

WITH A

CONTINUAL EYE TO ENGLISH ONES.

ADVERTISEMENT FOR TRACT THE FIRST AND SECOND;

OF THIS SECOND* PUBLICATION,

Namely, On the then proposed Spanish House of Lords. (*Anno* 1820.)

To those who have formed any conception, how slight soever, of the state of political society in Spain, and in particular of the enormity of the shares, possessed by the privileged orders, in the landed property of the country: —by the clergy, not less than a third of the whole; by nobles of different classes, estates equal in extent in some instances to an average English county, and those estates so entailed as to be unalienable,—to any person so informed, it can scarcely be matter of wonder that endeavours should have been employed to insert into the Spanish Constitution, in addition to the assembly composed of the Representatives of the whole people, privileged and unprivileged together, an assembly composed exclusively of the Representatives of that comparatively small, though still too large portion, with powers to this small part, in pursuit of its own particular and thence sinister interest, to frustrate all measures proposed by the Representatives of the whole for the good of the whole. This is legitimacy and social order, under the matchless constitution, the envy and admiration of the world. This is what accordingly was proposed to be made legitimacy and social order in Spain. A curious question is—how it should have happened that the Old Man of the Sea, whose gripe still continues on the neck of the modern Utopia, should not, in the early days of the Spanish national assembly, have fastened himself upon the neck of Spain. Yet, somehow or other, such is the escape on which Spain, from early times, and, from her Portugal, in these times, have respectively to congratulate themselves. That, in such a state of society, endeavours to that end should have been employed, is nothing wonderful: the wonder would have been, if they had *not* been employed: the wonder is, how they should have failed of being successful.

While corruptionists and their dupes are in extasy at the sight of their Utopia with her stag-neck, and three Old Men of the Sea fastened upon it, Spain and Portugal are congratulating themselves on having each but one of them, and his hold growing every day looser and looser, while they are cheered by Yankeeland, whose neck has, for these forty years, been free from all such vermin, and who bids the habitable globe observe and declare, whether, in any and what respect, she is the worse for it.

At a time when those prospects, which are now so happily realized, had not so much as opened, the name of Bentham had become familiar to whatever was liberal in the great southern peninsula of Europe. That exclusion which the system of corruption has hitherto put upon it in England, the united force of Censorships and Inquisitions has never been able to effect either in Spain or Portugal. Spite of both those bars, scarcely had those works of his, which were edited in 1802 by M. Dumont, made their appearance in France, than they found their way into both the two adjoining kingdoms. Those works, with which, neither in Oxford where he took his degrees, nor in either of the other Church of England Universities, not to speak of Scottish ones, any candidate for the loaves and fishes could con-

* *Second*, viz. in allusion to the Tract on the Liberty of the Press, see vol. ii. p. 275.

Digitized by Google

fess an acquaintance, without blasting the prospects of his life,—not only now are, but, almost immediately after their publication, were, taken in hand and fed upon at Salamanca and Coimbra: fed upon with a delight, the fruits of which have in both countries manifested themselves in the acts of the sovereign body, as well as in the speeches made in it; and, ere these pages have issued from the press, will probably in this country meet the public eye. In different parts of Spain, were read, (it may be imagined with what secrecy,) courses of lectures, of which those works formed the text-books: lectures, upon those gratuitous terms which, to patriotism and philanthropy, are so natural, to legitimacy and social order, so suspected and formidable. One of these lectures had a Lawyer for its reader; it was that Mora above-mentioned; another a Churchman: for it is only in England, that to Lawyers and Churchmen, with only here and there an exception, and still fewer that dare show themselves, everything that tends to reform or genuine improvement —everything, in a word, that tends to the advancement of the greatest happiness of the greatest number—is an object of horror and abhorrence. Of the above-mentioned works of Bentham, notice has reached this country of no fewer than three, if not four translations, as being finished and ready for the press, besides extracts in periodicals. But, on the one hand, such is the unavoidable bulk of those works, on the other hand, such the scarcity of money, and the smallness of the market for literary productions in general, nothing in that way from the Spanish press has yet reached this country, except a sort of analytical view, in a hundred and forty 8vo pages, having for a first title, *Espiritu de Bentham*, and for a second title, *Systéma de la Ciencia Social, por el Dr D. Toribio Nunez, Jurisconsulto Espanol*, breathing in every page the most rapturous admiration, and devoting to public reproach the government of his country, in case of their neglecting to make their utmost profit of the treasures thus offered to their hands.

Under these circumstances, it is not impossible that the Portuguese language may get the start of the Spanish: the Regency of Portugal having, in obedience to a special order from the Cortes dated the 13th of April last, already given commencement to a translation of the whole assemblage of such of his works as are not entirely out of print, according to the list that will be added to these pages.

While the great question above spoken of was in agitation, the distinguished Spaniard spoken of in the former tract just published, was urgent with Mr Bentham to come forward and throw his weight into that one of the two contending scales, towards which the inclination of his opinion was so naturally anticipated.

Of that application the present tract is the result. Upon its arrival at Madrid, it was with all despatch translated into Spanish, by the gentleman by whom it had, as above, been called for. As soon as an opportunity could be found, a plan of proceeding having been settled amongst some leading members of the Cortes, it was read in full assembly, in its character of an Address from Mr Bentham to the Cortes, and received with loud, abundant, and all but unanimous applause. An entry, there is reason to believe, was made of the transaction in the Journals of that House. But, whatever be the cause, as yet no copy of any such entry has in this country been received.

A document, expressive of the sensation made by it in one of the most distinguished and influential of the political clubs, by which the power of the tribunal of public opinion was then, and by some of them continues still to be, exercised at Madrid, had better fate. Being read at one of the meetings of the celebrated club mentioned in our newspapers as being held at the sign of the *Cross of Malta*, it was commented upon in an unvaried strain of eulogy. In conclusion, it procured for the author the quality of Honorary Member of that Society, as testified by a letter, the translation of which is subjoined below,* accompanied with a formal instrument of adoption, conceived in diplomatic language. Some months, however, had elapsed before the instrument reached London: such is the difficulty and uncertainty with which the intercourse between this country and that inland capital is embarrassed.

Before the advice, thus submitted by Mr Bentham to the sovereign body of Spain, had been presented to that Assembly, advice of a contrary tendency had, as may naturally be imagined, not been altogether wanting. An illustrious house in this country has the reputation—if not of giving birth to it, at least of having, with no small care and fondness, fostered it.

Be this as it may, some time before the question was brought before the Cortes, endeavours were used to form a ground for the pro-

---

* "The Patriotic Society of the Friends of the Constitution, established at the Malta Coffee-house, has heard publicly read, from its tribune, the work which you have consecrated to the service of Spanish freedom: and, in proof of the gratitude with which the people in general, and this Society in particular, have received, and the estimation in which they hold this fruit of your illustrious labours, do themselves the honour of transmitting to you the title of honorary associate, saluting you with the feelings of the most cordial fraternity.

"Madrid, 18th Sept. 1820.

"El Ciudadano Presidente
PATRICIO MOORE.

"ANDRES ROGO DEL GAMYA,
"Secretario.

"MANUEL BARCELO,
"Secretario."

"Ciudadano JEREMIAS BENTHAM."

Digitized by Google

posed Institution, by a reference to the place it occupies in the frame of the English Government. Of panegyric, there was of course no deficiency. Of the existence of a determinate Constitution, as belonging to that Government, the never-failing assumption was of course made. The opulence, power, and prosperity, in every shape so conspicuous in England, were on this occasion, as on so many other similar ones, brought to view, and magnified. The fallacy so regularly employed on those occasions, was employed on this. Of causes, obstacles, and uninfluencing circumstances, the usual olio was made. Whatever feature or degree of prosperity the institution in question had not been able to exclude, it received of course the credit of. If not in Spanish, at any rate in French, there was Blackstone, and there was De Lolme. Upon this stock, with the addition of whatever assistance may have been received from the above-mentioned great house, a man of distinguished literary celebrity and influence, Don Felix José Reynoso, set to work, and, under the title of "*Examen de los Delitos de Infidelidad*," (*Examination of the Offences of Infidelity*,) published a book in which the desirableness of an Upper House in the Representative system of Spain was much insisted upon. What was the precise species of transgression meant on this occasion to be designated by the word, "*infidelidad*," (the same in root, and everything but termination, as our English word *infidelity*,)—to what part of the field of thought and action the error thus imputed was meant to be represented as belonging—whether to that which regards conduct, or that which regards opinion—is more than can here be stated: nor, under that or any other interpretation, does it seem altogether easy, to discover the course taken by the ingenuity of the author, in making out the connexion, if any such there be, between either of the alleged errors above-mentioned, and the service promised to the people, by the introduction of a set of delegates, chosen by a comparatively small portion of the people, with interests opposite to those of the greater number, and with power to frustrate every endeavour which should have the greatest happiness of that greater number for its end in view. Whatever was the course so taken, the ingenuity displayed on this occasion, by the Spanish admirer of English Monarchical and Aristocratical vetos, in his endeavours to involve the subject in the customary cloud, seems not to have been altogether unsuccessful. At the then approaching election of Deputies from the province of Seville to the Cortes, a man, of whose regard for the greatest happiness of the greatest number, no doubt seems ever to have been entertained, Riego, so well known in England as well as everywhere else, as one of the three military men to whom Spain is principally indebted for her deliverance, scrupled not to propose him as being pre-eminently fit to serve in the Cortes for that Province, nor, on that occasion, to support him with all his influence. The virtues, moral as well as intellectual, of the illustrious publicist, were, by the still more illustrious soldier, enlarged upon in the warmest strain of panegyric. Whatsoever may have been the case with regard to the moral class of these virtues, to whatsoever was said in attestation and praise of those of the intellectual class, the most unqualified assent appears to have been attached. The more irresistible his powers of persuasion, the greater (it was said) will be the danger, if in such a situation they should come to be employed in giving their support to such a cause: to a proposed new part, by which, so sure as introduced, the force and effect of whatever is good in any of the other parts of the fabric, would be destroyed.

The opinion of the people in question had been formed: formed, after everything that had been said to them by the echo of the great English House against the offence of "*infidelidad*," and in favour of an additional sovereign body, composed of, and chosen by, a set of laymen, already favoured above the rest of their countrymen, nobody could say why, and a set of churchmen, of whom the best that could be hoped for was—that, as in England, Deans, Prebendaries, and Canons are, they should be Sinecurists. All that the felicity of Don Felix could find to say on that side, they had heard: and, for anything that hath as yet appeared, nothing had been said to them in print by anybody on the other side. All this notwithstanding, their opinion was decided against the Spanish House of Lords. Whether that opinion was altogether a groundless one is a question, in finding an answer to which, it seems not impossible that the following tract may afford to the English reader some assistance. To the English reader, the question cannot indeed be anything more than a mere matter of curiosity: so closely does he feel himself held in the embrace of the grand Boa Constrictor with a coronet on his head. Not so to the man of Norway: for, somehow or other, in that country, whether for want of food, or from what other cause, the crested and bone-crushing dragon is found not to thrive. On the declivity of an elevated rock, scarce able to keep his hold, he may be seen lying in a languishing state: the men, whose bones he would once have crushed, have become too many for him. The sceptre indeed, as it could not fail to be, is outstretched to save him. Glory to the man, should any such arise, by whom this instrument of despotism and misrule shall have been rightly dealt with: dealt with, as the Boa, where he is in vigour, deals with the people's bones.

Digitized by Google

TRACT, No. I.

Letter to the Spanish Nation on a then (Anno 1820) proposed House of Lords.

MEN of Madrid, Members of the Cortes, People of Spain!—if the old man who thus addresses you is an intruder, listen to him with indulgence. He is not a *spontaneous* one; he would not have spoken had he not been *called*.

Among the subjects which I understand are before you, none is of more importance—none perhaps of so much importance—as the question, whether, in addition to a Sovereign Assembly composed of representatives, whom the *subject many* have appointed and can remove, there shall be *another*, composed of those whom the *subject many* neither will be able to remove, nor will so much as have appointed! If I may rely on the perhaps too partial anticipations of some amongst you,—my works on legislation having been fortunate enough, some of them, to be honoured by your notice, and, among the works of men foreign to your nation, these having been the only ones thus honoured—even my opinion, though it were but an opinion and nothing more, might, for the present, have its use. In presenting you with it,—naked, or little better than naked, of reasons, as you will see it,—the necessity of the case compels me to break through a habit, which, till now, has been a law to me. I mean, that of placing my whole reliance on the force of specific reasons, keeping my own insignificant personality as completely out of view as possible. To cover with these reasons, to the best of my ability, the whole field of legislation, has been the labour of my whole life. On these reasons, on every part of that field, I have placed my sole dependence. As to *opinion*—my own opinion—considered in the character of *an authority*—of a *leaning-stock* for the opinion of other men—let any man set it at as low a degree as he may in the scale of value, he cannot set it lower than it is set by myself.

Such as it is, however, I have been called upon to give it. Whosoever among you may be pleased thus to honour me, may behold it in this page.

In addition to a Supreme Assembly composed of agents whom the subject many have appointed and can remove, shall there be another composed of men whom they will not have appointed, nor will ever be able to remove? Spaniards! by the simple statement of it, is not the question already answered? Spaniards! think for yourselves! think whether, between an assembly of the *ruling few* thus constituted on the one part, and the interests of the *subject many* on the other part, there exists not a point-blank opposition, and that opposition an unchangeable one? Think whether there be a single *reform*—think whether there be a single considerable *improvement* in any shape—which a body of rulers, unappointed and irremoveable by the people, will not, on one account or another, deem it for their interest to oppose, and oppose with full effect? For this they will have avowedly full power: and for what purpose can any such power—for what purpose can a *veto*—be asked for, but to be used? So far as, in their own view, their own interests coincide with yours, so far indeed they will go. But, the unchangeable nature of man considered, can you, on any substantial ground, entertain any the slightest expectation of their going any further? And the rendering the separation of their own interests from yours as complete and as wide as possible, that yours may be made a sacrifice to theirs, can this ever fail to be their constant study? Their study, will it not on every occasion be, to give to the expenditure of government, and thence to the burthens that press upon you, the greatest extent possible, that, out of that expense, they may, in the shape of official emolument, extract the greatest possible profit for themselves and their connexions? Lawyers themselves, or in league with lawyers, their determination will it not be—to keep the amount of expense in judicial procedure, and thence of factitious delay and vexation, as high as possible, for the sake of lawyer's profit extracted out of the expense? For this cause will they not be inexorable in the determination to keep exposing the unopulent many to remediless injury, at the hands of the *opulent*, and, at the head of them, the *ruling few*; denying justice to all but these few, and selling it to them at a price which they would not endure to pay, but for the impunity and the power of oppression which they buy with it? To keep the necessity of having recourse to lawyers as cogent as possible, will they not keep the *rule of action* in a state of as complete uncertainty as possible? will they not even keep that indispensable instrument of *security* from so much as coming into existence? The boon, which even Napoleon granted—the matchless boon of a really existing and accessible body of laws—will they not remain for ever determined to refuse? If, on these points, your own experience will not suffice for you, look around you: look to the men alike situated, the men cast in the same mould, the men of law in every other country, and in particular in that from which I write.

You have heard of our English Constitution—of *high-born virtue* as the cause of it, and consummate happiness as the fruit of it. Circumstances have, it is true, rendered the government of the *few* less bad *here* than in any other country: that happy America alone excepted, which took from it all the good, leaving all the bad behind. Circumstances have

Digitized by Google

rendered it less bad here than elsewhere; but as to *virtue*, judge of it from one fact:—you have heard of our *two parties*, the Tories and the Whigs: the Tories, oppressors and plunderers in possession; the Whigs their successors in expectancy. Can you believe it? According to a set of principles, openly and deliberately avowed by both parties, making fortunes for the ruling few, at the expense of the subject many, is the very end of government. You must, all of you, have heard of our late minister, *William Pitt;* you must, some of you, have heard of his right-hand man, *George Rose;* both leaders of the Tories. You must, all of you, have heard of *Burke, Edmund Burke*, the most illustrious of writers among the Whigs. Each of these men published, at different times, his pamphlet on the subject of finance—each of them, such is the depravity of the ruling few, feared not to speak of this as an acknowledged principle. I, for my part, have, at different times, published two *Defences of Economy:* one against that same George Rose, another against that same Edmund Burke; for, long before the Tory pamphlet was written or thought of, Burke, adding treachery and imposture to rapacity, had constituted himself an advocate for economy, for the very purpose of betraying it. I consigned these papers to a periodical publication, called *the Pamphleteer*, mixing them thus with Government pamphlets, that they might present themselves unawares to this or that eye which, by interest, or interest-begotten prejudice, would otherwise have been closed against them. I have there shown, that, consistently with the conduct, or even with the avowed principles, of these men, not a *maravedi* would be left in the pockets of the people—not a maravedi, which the *ruling few* would be able to extract for their own use. But in this unhappy country, to stop the progress of irresistible oppression and depredation, what signifies what I, what anybody, can write? The contest now is—not between Tories and Whigs: for, though divided against one another in the contest for plunderage, these, it has been for sometime seen, are, by a stronger community of sinister interest, united against the people. No: not between Tories and Whigs; but between the *ruling few* on the one part, and the *subject many* on the other, is the real contest. The subject many, if you believe their enemies, are enemies to property: their aim is—to take it, all of it, from its present owners, and divide it amongst one another. "No," say the subject many, "no such design either ever was, or ever could be, entertained by anybody: by any body of men large enough to make any the smallest commencement towards it; for, long before the property could have got into the undisturbed possession of the supposed intended sharers, the destruction of property would be complete: all property destroyed, all life would be destroyed with it: and, earlier than those of the proprietors, the lives of the destroyers themselves. Scarcely out of our seventeen millions could you find a thousand men blind enough not to see this:" neither, then, *have we* any such design, nor can *you believe* we have. But this design which you so shamelessly impute to us—this design which, carried to the extent you speak of, and in the situation of the persons on whom you throw the imputation of it, is so plainly impossible—this design of enriching one's self at the expense of others—this very design, not only you yourselves have from first to last been harbouring it, but you have all along been carrying it on: carrying it on to the utmost extent which you have found possible. For *us* to enrich *ourselves* at *your* expense is not possible; for *you* to enrich *yourselves* at *our* expense, is a design not only possible, but actually and continually carried into effect: carried into effect, and to the utmost extent to which it has been possible. Of late years, since the French revolution afforded you a pretence, so rapid have been your advances, that the increase of waste and corruption—waste for the purpose of corruption, corruption for the purpose of waste, and both for the purpose of depredation—has almost reached its limits; taxes are added to taxes, and produce is not added to produce.

With the exception of the few that have owed their rise to trade, think whether among those families which we behold seated on the summit of that eminence which is composed of power, opulence, and factitious dignity, there can have been any who have been raised by any thing better than depredation: licensed and irresistible depredation; depredation by that swarm of harpies which, in the field of government, have never been fabulous—by the harpy in the shape of the Soldier, by the harpy in the shape of the Lawyer, by the harpy in the shape of the Placeman, by the harpy in the shape of the Priest. Thus it has surely been with us: think whether it can have been otherwise with you: think whether it can have been any otherwise with any pure monarchy, with any aristocracy, with any mixed monarchy, with any other government, than the pure representative democracy—the truly matchless and unperishable government of the American United States. Leave, then, to each individual harpy the undisturbed possession of what he has: leave it to him, on the sole condition of his remaining quiet. But do not equip him for fresh mischief, as our cock-fighters do their cocks: do not, in addition to the claws which he *has*, arm him with *new* and iron ones: do not give him a *veto:* a veto upon every constitution, that can tend to set limits to the plunderage.

Magnanimous Spaniards! for years to come, not to say ages, in you is our best, if not our only hope! to you, who have been the most oppressed of slaves, to you it belongs to give liberty to Europe. Yes: to all Europe! nor in Europe is there that other nation that has a more incontestable or more urgent need of it than that in which I write. Now is your

Digitized by Google

time or never. Fear not from this country any effectual opposition. True it is that the worst mischief the French ever did you was kindness in comparison with that which our rulers would do to you, rather than you should save yourselves. As they dealt with Genoa, as they dealt with Naples, as they dealt with the Netherlands, as they dealt with Poland, as they dealt with Germany, so would they deal with you: so, and as much worse as were necessary to prevent your salvation. Cooler, more determined, more inexorable enemies mankind never had, nor ever can have. But no such mischief, no, nor any considerable mischief is it in their power to do to you. True it is, that neither against French, any more than against English rulers, could you have any security but from their impotence. This, however, you most happily have at present, and this you will continue to have long enough for the consolidation of your independence. True it is, that the despots have, each gang of them, force enough for the destruction of its own subjects. But they have not, any of them —no, nor all of them together—force enough to destroy you. Men indeed—oh yes, *men* they have, and in superabundance. But money they have none; and without money, and money in large masses, men cannot be made to move.

Oh yes, my friends! put everything to hazard, rather than let in the menaced *veto;* the many-headed, the all-devouring, the insatiable monster, worthy successor of the Trojan Horse. In vain would any one pretend that its interest is the same with yours. To be free from arbitrary imprisonment, from forfeiture, from death, from torture, this, it is true, is their interest not less than yours. True, but then, in their own eyes at least, they have to themselves a dearer and counter interest, by which this vulgar and common interest is sure to be eclipsed. The security—the blessing which they could not hold without having you to share it with them—this they behold with disdain, this is without value in their eyes. The *power*—the *factitious dignity* by which they are distinguished—distinguished *from* you and above you—this *with them* is everything. For his own security then, will each of them be content to trust to other sources: to his own good fortune, to his own address, to that prostration before the footstool of power —to that "prostration of understanding and will," to which, to make everything else sure, he is determined there shall be no bounds: that "prostration of understanding and will," which, in so many words, his Lordship of London preaches to us.

Spaniards! in you is our hope; for this long time our only hope: save *yourselves*, you *save us;* save *yourselves*, or *we* sink. What *you*, till so lately *were*, we at this time are. If you had your slaughterers, we have ours: if you *had* your torturers, we *have* ours: if you have your embroiderers, we have our tailors. As to our liberties—our so much vaunted liberties—inadequate as they always were, they are gone: corruption has completely rotted them: preserved they cannot be; if ever in future possessed by us, they must be regained. Our government is already become a military one: if but a child cries, a troop is sent to quiet it. As to our Lawyers, they, whether on Benches or on Seats, are what they have always been, and, so long as monarchy lasts, always will be, —tools of power, tools to the Government, all of them, as soon as they can get into it; tools to the Opposition, some of them, that they may show themselves, and till they can sell themselves. Even in our *Soldiers* more hope have the friends of good government than in our *Lawyers*. As it is, the forms of it are all that remain; the substance is all gone: the shell we make a show with, the kernel is rotten. Seated—not by us, but by money or by terror, or at the best by themselves or one another, we behold in our representatives, as they call themselves, the most mischievous and most implacable of our enemies.

I who write this, haste to write to you while I am still able; I say, while I am still able: for all sense of security has long been fled from me. *Cartwright*, *Burdett*, are under prosecution. *Hobhouse* has already endured, manfully endured, his punishment: and, unless he saves himself by silence or desertion, punished over and over again, it seems his destiny to be. As to *me*, who, I hear it said continually, am more *criminal* than any of them—me, for the fruit of whose labours, criminal as they are styled, the honestest and wisest among you are, at this moment, if I have been rightly informed, calling aloud that they may press it to their lips; there is something—it belongs not to me to say what—that hitherto has saved me. But my hour cannot be far distant. Already, for what *I* have written, *others* have been punished. Not in the hermitage from which I write, but in some prison shall I die. I could not die in greater comfort than by dying in your service.

JEREMY BENTHAM.

ADVERTISEMENT TO TRACT THE SECOND.

The occasion, on which the paper that forms the subject of these remarks, was published, is that of the ever-memorable massacre perpetrated at Cadiz, the principal sea-port in Spain, the principal seat of commerce in that country —the city next in population to the Capital. The day on which this tragedy was acted, was the tenth of March, 1820. For its declared

Digitized by Google

object it had the preservation of that state of things which, under a despotism, is designated by the words *social order*;—for its perpetrators, those who profit by—those whose particular and sinister interest is interwoven with—the maintenance of that order; for its instruments, perfidy and treachery.

In the great contest which, now for about half a century, has been carrying on in the field of the habitable globe—in the contest between the *many* and the *few*—this has not been one of the least conspicuous scenes. Impatience and cruelty have everywhere characterized the deportment of the ruling few, long-suffering and forbearance that of the subject many. In this contest, the object of the greatest number has, of course, all along, been that which, on pain of their extinction, it can never cease to be—the greatest happiness of the greatest number: of the ruling few, under the like impulse, the greatest happiness of the ruling few. By the greatest number—by the subject many—*their* object—their real object—has nowhere—has never—been disavowed: it has not been, it never can be, an object for them to be ashamed of. By no motive could they have been led to disavow it. By the most irresistible impulses, they have, everywhere and at all times, been impelled to the avowal of it: all their prospects of success have depended on the extent given to the avowal made of it. Not so the ruling few. Consistently with common decency, consistently with common prudence, consistently with any hope of advantage, consistently with any assurance of security to themselves, at no time, nor anywhere, can their object have been, or in future be, avowed: to say to the subject many, sacrifice your happiness to ours, would be to say, be fools, that we, for our own profit, and at your expense, may be knaves.

Being thus, by the very nature of their claim, precluded from the use of *reason* in support of it, they have been driven by necessity to lay hold on *custom*, as the only support that could be found for it. The government—the unbridled government—of *one*, being the simplest possible form of government, and that to which, in the early stages of society, each horde found itself, under pain of immediate extirpation, necessitated to submit itself during its warfare with the neighbouring hordes, of which warfare either the existence or the immediate expectation was incessant,—this was the form of government that succeeded everywhere to primeval anarchy. For a long time, if, on any occasion, power felt any such sense as that of restraint, it was only from momentary and easily assuageable dissatisfaction: not till after a long course of mutual and variously terminating struggles, could it have anywhere, as here and there it has done, found itself under the necessity of submitting to any determinate and settled limitations. In comparison with the political communities in which all such limitations remain still unknown, few are those in which any such galling shackles have had or have place. Hence it is that, subject or not subject to this or that limitation, submitted to for the purchase of the voluntary support of the sub-ruling few, everywhere has the government of *one* had *custom* for its support. Hence it is likewise that, while Monarchy and Custom have everywhere had *Reason* for their adversary, with exceptions to a correspondently small extent, and those of scarce any other than a recent date, they have had reason*ing* and reason*ers* for their support. Everything being to be hoped from the support given to the claims of the one and the few, nothing to be hoped, but everything to be feared, from support given to the cause of the many, and on this part of the field of discourse, the great mass of the language, as it stands, having had for its manufacturers those reasoners upon paper, who all the while have been reasoning under the yoke of this sinister influence, the language furnished by *custom* for the occasion, has been everywhere a tissue of fallacies, spread abroad for the support of it.

Hence, as part and parcel of that tissue, the jargon, the contents of which, on this field, Custom has engaged men to accept at one another's hands, in lieu of reason. Over and above those fallacies, which require, each of them, a sentence, or perhaps a paragraph, to give expression to it, and of which a list in some detail has been given in another work,* —hence those still more commodious fallacies, for the propagation of which a single phrase, or even a single word, is sufficient. Witness, *dignity of the crown, dignity of the throne, splendour of the crown, splendour of the throne, matchless Constitution, English institutions.* Witness *legitimacy, order, social order.* By a custom, commenced by paid and enlisted, reinforced by gratuitous and deluded scribes, all these imaginary and verbal blessings have been placed in the catalogue of things to be cherished and maintained: to be maintained, all of them, with equally ardent devotion, and indefatigable perseverance. Of the greatest happiness of the greatest number, nowhere, till of late years in the united Anglo-American states, nowhere, without absurdity could it anywhere have been stated as belonging to the number of those things which ought to be *maintained.* Why it could not, will be seen as soon as mentioned: that which is nowhere *established*, cannot anywhere be *maintained.* No objection, it is true, is this to its being put upon the list of those things which ought to be established. Accordingly, now that in that only seat of established good government, it is already upon the list of those things which ought to be maintained, and now that, in some political communities, it has been put upon the list of those things which ought to be established,

* See The Book of Fallacies, in vol. ii. of this collection.

Digitized by Google

and which with all their energy, men are labouring to establish,—even the best paid, even the most hungry, even the most strenuous supporters of the claims of the ruling *one* and the sub-ruling *few*, see no hope of advantage from any direct denial opposed to so uncontrovertible a position, as that the greatest happiness of the greatest number ought everywhere to be established. In the diverting of men's attention from that sole basis of good government, is their only hope; and hence it is that, from Thrones, and Houses, and Benches, the ears of the people are so indefatigably plied with the confused and senseless din, composed of matchless Constitution, English institutions, wisdom of Ancestors, dignity of the Crown, splendour of the Crown, dignity of the Throne, splendour of the Throne, balance, mixture of classes, wash (or something else) that "works well," Holy Religion, Licentiousness, Blasphemy, Atheism, Jacobinism, Legitimacy, Order, Social Order, with *et cæteras* upon *et cæteras*.

Let Reason be fruitful, Custom barren, is among the aphorisms of Lord Bacon. In saying this, he said what he wished to see, assuredly not what he saw: in the field of government—in this field, beyond all others—Reason (and we have seen why) breeds like a shemartin; custom, like a doe-rabbit.

Finding themselves hemmed in on all sides—sure of discomfiture and overthrow, should they, on any occasion, venture to act upon the field of reason—always dissatisfied with themselves—always condemned by conscience, always beholding, in the prevalence of reason and the spread of intellectual light, the downfal of their power—the temper prevalent among the oppressing tribe has, always and everywhere, been congenial to this their situation; their conduct to their temper: their temper feverish, their conduct sanguinary and atrocious. In the many, the sacrifice of whose interest to their own has been their constant object and perpetual occupation, they could do no otherwise than behold so many constant objects of their contempt and hatred: of contempt for their actual patience, of hatred and *that*, notwithstanding the contempt, never altogether clear of alarm, from the unassuageable apprehension of the ultimate cessation of that patience. Makers and Masters of the laws, death and torture, in rich variety of shape, they have spread over the whole contexture of those laws, for the gratification of those angry passions, and for the maintenance of that order, to which every word from the voice of Reason, sounded in their ears as pregnant with disturbance. Hence the apparatus of gibbets, halters, axes, pillories, chains, and dungeons: hence the anxiety and abundance with which the musket and the sabre are at all times kept in store; kept in store, and, by the despatch and extent given to their operations, held in preparation to anticipate, support, and relieve the labours of the judicatory. Hence the implacable enmity to the liberty of the press: hence the indefatigable exertions for the extinction of it. Hence the Association, self-styled *Constitutional*, headed by the heads of factitious religion and standing armies, at the invitation, and to the emolument, of lawyers: the too real association, formed for the protection of a non-entity, by the destruction of whatever good was ever spoken of as belonging to it.

The causes have now been seen of that contrast which, since the commencement of the great contest above spoken of, has, at all times, been exhibited, between the conduct of the ruling *one* and sub-ruling *few* on the one hand, and that of the subject and suffering *many* on the other.

Of the two so opposite systems of political action—that which has for its object the greatest happiness of the ruling few, and that which has for its object the greatest happiness of the subject many—would you see at one view an exemplification as striking as it is instructive? Look to the now so happily independent Anglo-American States. Look back to the state of things in that country, at the period of the great contest, of which it was the scene. Note well the several systems of warfare, on which the two contending parties were prepared to act. Look first to *legitimacy*, and *matchless constitution*: mark the fate, which, in case of success to their side, they had prepared for *their* adversaries: strangulation for necks, amputation for heads, laceration for bowels, severance and dispersion for quarters: and, lest all this should not be sufficient for the punishment of the so-styled guilty, denial of justice for creditors, purposed indigence for untried and unaccused wives and children, purposed indigence even for indeterminately distant kindred, whether sharers in, unapprised of, or even adverse to, their designs:—for all these, in indeterminable and unheeded multitudes: for, such is the inscrutably complicated result—wire-drawn, nobody knows when, by nobody knows what King's creatures, in the situation of ever removeable Judges, out of so short and irrelevant a phrase as *corruption of blood*: a phrase, invented by the corrupt in will and understanding, for a mask to the atrocity, by which, in such countless multitudes, the confessedly innocent are pierced through and through, for the chance of conveying an additional pang to the bosom of the so-styled guilty, whose proper powers of sufferance, it is thus proved, were still, after being put to the utmost stretch, insufficient for satiating the appetite of groundless vengeance: vengeance, against which it was assumed that nothing could be said—because law had been made the instrument of it, and all-comprehensiveness and perpetuity had been given to it.

Such being the system, in pursuance of which, in case of success, under the orders of the all-ruling one, the ruling few were on that

Digitized by Google

occasion prepared to act, as in such contests they never have failed, nor in case of success ever can fail to act,—mark now the system of counteraction, employed in that country, by the oppressed and subject many, for their protection against those destined perpetually impending, and perpetually threatened horrors. Look in the first place to the *commencement* of the contest: mark well the character of the measures of resistance, organised and put in action, before the sword was as yet resorted to. To treason-law, as above described, including *corruption of blood* as above described, what was it they opposed? Neither more nor less than the infliction called *tarring and feathering*. And this tarring and feathering, what was it? The substituting, to a part of the sufferer's usual clothing, a covering composed of feathers, made to adhere to his body by a coating of tar. Humiliation, by means of scorn and derision, was accordingly, it may well be concluded, a suffering actually sustained. But, to this mental, what corporal sufferance was added? None whatever. To the sufferance thus inflicted in the name of punishment on the person of the alleged offender, to this *property-seated* punishment—what addition was made in the shape of *mis-seated* punishment? what punishment was purposely inflicted on those to whom no offence was so much as imputed? None whatever.

Look, in conclusion, to the *termination* of the contest: look to *Saratoga:* look to *York Town*. What, in the eyes of the victors, were the prostrate vanquished? Not rebels, not traitors: not anything but what Englishmen have been wont to be to French victors, Frenchmen to English victors—unfortunate, yet not the less respected, enemies.

Of the manner in which, in the season of ascendancy the subject many bear their faculties, would you see another exemplification? Cast a momentary glance on Ireland.* Behold the vast majority of the people in that country, objects of inveterate oppression and legalized depredation, victims of a system of studied and inexorable misrule, carried on through centuries. Under such provocation, mark their deportment, when circumstances had placed the power of retaliation in their hands. Look, in the first place, to the five or six years' period between the years 1778 and 1783. Compare the state of the country in that period with the state of it not only before but ever since: compare the conduct maintained there in relation to one another by those same universally contrasted parties, both of them having the contest in America, and latterly the termination of it, full in view.

Favoured by circumstances, favoured by the happy weakness of their tyrant neighbours, linked in the bands of a no less peaceful than free and voluntary confederacy, open to all whom situation permitted and affection disposed to enter into it, behold the oppressed *many*, rising up in arms. Scarce had they begun to show themselves, when, without a life sacrificed, without a blow struck, they saw the votaries of corruption, by the mere apprehension of what they were able to do and of what had been deserved at their hands, laid prostrate at their feet. For five years and more, by the confession of the most adverse parties, by the testimony of all journalists, of all historians—the whole power of the country was in their hands. What was the use they made of it? What use, in the zenith of their power, did these Irish Insurgents make of those English supports of legitimacy and social order—axes, and gibbets, with their *et ceteras* as above? What use made they even of the American instruments of self-preservation—tar and feathers? None. What, in fine, viewed in every point of view, was the true, the universally undisputed, the indisputably proper appellation of this period of Irish history? Yes: it was the golden period, the no longer fabulous—the visible golden age.† Behold now the sad reverse. Unhappily for both islands, peace was at length restored to England. The hands of English tyrants were thus set free. What was the consequence to Ireland? The golden age vanished: the age of iron returned: the age of iron, and, with it, that scene of oppression and legalized depredation—of insolence on the one hand, of ever just and ever boiling howsoever smothered indignation on the other; thereupon came that conspiracy among the *few*, having for its avowed object the extermination of the *many*:—that conspiracy, of which it is so well known to everybody that it need not be said by anybody, who the men are, who so lately were avowedly, and because not now avowedly, are not the less determinately and effectively at the head.

Thus much as to the catastrophe. Now as to the actors. The men, by whom this golden age was thus created and so long preserved—what were they? What, but the men of universal suffrage? Yes: and by them in that island, and from that island in this, within a few years after its establishment in United America, would the system of universality, secrecy, equality and annuality of suffrage have been established, and the no longer fabulous golden age have been thus extended and

* See farther, with reference to Ireland and the Volunteers, "Radicalism not dangerous," vol. v. p. 599, *et seq.*

† See the Whig Biography of Mr Hardy, the Tory Observations on Irish affairs by Lord Sheffield, and even the Tory History of Mr Adolphus. "Let those who sneer at the Volunteer Institution, point out the days," (says Mr Hardy, *Life of Lord Charlemont*, p. 197,) "not merely in the Irish, but *any* history, when decorous measures kept more even pace with the best charities of life, when crime found less countenance, and law more reverence." —"Private property," (p. 198,) "private peace, were everywhere watched over by the volunteers with a filial and pious care."

Digitized by Google

perpetuated, but for the unhappily restored peace above-mentioned, in conjunction with the treachery of certain of the people's pretended friends; one of whom, in the teeth of that same five years' fresh experience, had the effrontery to speak of universal division and consequent destruction of property, as the certain consequence of that very state of things, which, having under the eyes of all men, but in a more particular manner under his own, been so recently experienced, had produced none but the most opposite—unprecedentedly opposite effects.

Look at this moment to Portugal: behold that now magnanimous and regenerated nation, casting off at once the double yoke of a domestic and foreign despotism. Before the auspicious day arrived, think what had been the oppression on the one hand, the forbearance on the other, the wretchedness in consequence: read it in the documents of the time. Since that auspicious day, inquire what has been the vengeance: inquire ever so sharply, no such thing will you find.

Warmed by the subject, the pen has been running riot. Recollection commands it back to Cadiz.

On the 10th of March, 1820, at a moment of general festivity,—the assembled multitude being no less peaceful, no less unsuspecting, no less crowded, no less defenceless, than, in the preceding August, they had been at Manchester,—at the instigation—not of a simple Priest, but of a Bishop—a selection, carefully made from the refuse of the army, fell upon the people, and, not with cutting weapons only, but with fire-arms, commenced an equally indiscriminating slaughter. As to the number of those slain on the spot, accounts vary from three hundred to between four and five hundred; as to the wounded, they agree in estimating it at a thousand.

The triumph was not of long duration. The cause of the people finally prevailed; the authority of the law, such as in that country it is, was restored. But the law thus restored, was itself the law of tyranny. It was a system of law, which had for its end in view the same as that of matchless constitution, envy and admiration of the world: which had for its end in view, in a word, (need it be mentioned?) the establishment of the greatest happiness of the *ruling one* and the *sub-ruling few*, at the expense, and by the sacrifice of the greatest happiness of the greatest number. Amongst other tribes of the ruling few, the establishment of the greatest happiness of the lawyer-tribe,—manufacturers of an unassailable tyranny, the necessary and ever ready instrument of every other tyranny.

In Spain, as, with scarce an exception, in every other of the countries governed by Rome-bred law,—effectual care had been taken, that, in all cases, in which the sinister interest of the ruling one was concerned, the fate of the accused should be completely at the disposal of an ever-obsequious instrument of that same ruling one: a judge, nominated, and at all times removeable, by his flat: and that, for that purpose, the proceedings in general, and the collection of the evidence in particular—of that mass of information, on the collection of which the result of every cause necessarily depends,—should, from first to last, remain covered with a veil of impenetrable secrecy. In England, only in cases where *property* is at stake, does this last-mentioned security, for injustice, corruption, and official depredation—this secrecy in the collection of evidence, stand as yet established: any designs formed by the head of the law upon jury trial—any such designs, howsoever intimated, not having as yet been particularized and brought forward: and though when the whole of the richest man's property is at stake, property is thus disposed of by the instrumentality of secretly collected, or, as in bankruptcy cases, by that of uncrossexaminable evidences—still, in smaller masses, it is left to be disposed of, by a system of evidence, which, how replete soever with absurdity and inconsistency, is, upon the whole, somewhat less flagrantly and completely hostile to justice.*

TRACT, No. II.

Observations on Judge Advocate Hermosa's Panegyric on Judicial Delays; on the Occasion of the Impunity as yet given by him to the loyal Authors of the Cadiz Massacre, a counterpart to the Manchester Massacre; explaining, moreover, the Effects of secrecy in judicature.

Complaints, I observe, have been made, of the delay experienced in the case of the Cadiz massacre. Of a paper, signed, according to the English translation, "Sanlucar de Barrameda, 20th August, 1820, the judge of instruction, Cormel Fiscal Gaspar Hermosa," the professed object, is—to satisfy the Spanish people, that, from this delay, misconduct is not, in any shape, justly imputable to that judge. The business in question, is the business of the day.

* It being the author's intimate conviction, deduced from the consideration, as well of the universal nature of man, as of the whole *compages* of particular facts, that on the one hand in *Radicalism there is nothing dangerous* to property or general

Digitized by Google

But, on the occasion of this business, I see principles avowed, the influence of which is of as lasting a nature as that of the system of law, of which they make a part, and from which they were imbibed.

"I remind the public," (says this judge,) "I remind the public, that *delay* in judicial proceedings, is a *tribute* which is due to justice, and, as it were, the *price* at which the security of the citizen is purchased: that the *judicial forms are*"—(if, instead of *are*, he had said *ought to be*, his proposition would have stood rather clearer of dispute)—"that the judicial forms *are*—the shields of liberty, and *precipitation* the most dangerous rock in the way of justice."

This defence of his excepted, from no indiyidual fact do I see any reason for suspecting that the functionary in question is chargeable with misconduct in any shape: that, for example, he has any improper connexion with the parties accused, or any of them: any improper connexion either by complicity, unity of affection, fear of displeasure, bribery, or corruption in any other shape. Of the particular facts belonging to the individual case, all that is known to *me* is known to everybody: and they are, all of them, in his favour: namely, that, on this melancholy occasion, both actors and witnesses must have been, in a degree seldom if ever exemplified in the annals of judicature, numerous: and that, whatever be the occasion, the greater the *number* of the persons to be examined, the greater, *cæteris paribus*, must have been the quantity of *time* requisite to be occupied in the examination.

What, on the other hand, is but too true, is —that if, to a man in his situation, the above charges were, all of them, justly applicable, and accordingly applied,—this is the exact complexion of the sort of defence, that he would make. It is the sort of defence, which any man, in what degree soever guilty, would have it in his power to make, and which every man, who is guilty, would, if he saw any probability of its being received and productive of effect, be sure to make. It is the sort of defence, which I will not say no man, who is innocent, would ever make, (for innocence does not necessarily give right discernment, either to the person who pleads, or to those before whom he pleads,) but which an innocent man, if he has right discernment, would naturally avoid employing: and for this plain reason—because it is the interest, and necessary object, of the man who is innocent, to render his case as clearly distinguishable as possible from that of the man who is guilty.

Yes: when a man is really innocent, the course he takes will, naturally speaking, be exactly the reverse of the course thus taken. It will not consist of *vague generalities* such as the above: of aphorisms, without applications. No: but, as far as time and space will permit, he will hold up to view, in all their circumstances, the individual facts by which his innocence may be made manifest. In the present instance, for example, number of days of sitting, and hours in each day: number of persons that have been examined on the several days: number of persons that, as far as known, remained to be examined, &c. &c.

Instead of this, or anything like it, what does this judge? Addressing himself to the Spanish public, as a schoolmaster to his scholars, he recalls to their minds, in the form of maxims, certain lessons which, in his view of the matter, are in danger of not being sufficiently present to their memories. To each of these several maxims, I shall proceed to give a separate examination: namely to the end that it may be seen how far they are conducive, or repugnant, to the incontestably proper ends of judicature.

If, in my view of them, the evil tendency of the principles thus inculcated were confined to the screening of one individual, or a limited number of assignable individuals, from just censure, never would this pen have employed itself, in a task so ill-adapted to the situation of one who is a stranger to the country in which the facts had place. But, in my view of them, the *tendency*, though it were too much to say the *object*, is—to provide a screen for malpractice, in every shape, on the part of all Judges, to the prejudice of the subject many in all places, and at all times: a screen for all individuals in that situation, and, at the same time, for the system under which they act: a system which, in my view of it, has, all along, had misrule, in that shape, for its very object, as well as for its effect: a system, on the utter extirpation of which, in my view of it, the ultimate salvation of Spain, and of every country that has broke loose from the trammels of despotism, depends.

1. Maxim the First:—maxim as to *delay*. "Delay in judicial proceedings, is a *tribute*," (says he,) "which is due to justice, and, as it were, the *price* at which the security of the citizen is purchased."

That, to the operations, in the performance of which judicial procedure consists, as to operations of every other kind, *time* is necessary, is a truth, of which, if that was his meaning, it needed not a remark from a public functionary to remind us. But, by the mention of the word *price*, what is insinuated is this—namely, that whatsoever be the occasion, the greater the quantity of time is, that elapses before a definitive decision is known to have been pronounced, the greater the probability is, that the decision will be conformable to justice: for, generally speaking, the higher the price

security in any shape, on the other hand, in *Despotism* there is that which is everlastingly and most seriously *dangerous to itself*, he had made considerable advance in both researches, when stopt for the present at least, by other calls of a still more urgent nature. To see both topics in other and abler hands would afford him the sincerest pleasure.

Digitized by Google

you are content to pay for your goods, the better the goods are that you will have. But if, in the case of delay, this were true, the surest way of pronouncing a right decision would be, never to pronounce any decision at all: for, in that case, the price paid would be the very highest price possible.

On the other hand may be seen a truth or two, of which our instructor himself seems to stand somewhat in need of being reminded: namely—that, though operations are performed *in* time, they are not performed *by* time; that the professing to be employing one's self in the performance of an operation, and the being actually so employed, are not exactly the same thing; that, while delay increases, recollection weakens, and the very sources of evidence vanish; that *delay in judicature* is, so long as it lasts, *denial of justice*, and that a panegyric on delay is, therefore, a panegyric on denial of justice.

True it is that to the quantity of delay, that, by possibility, may be necessary to rectitude of decision, there is no certain limit. Why? Because there is no certain limit to the quantity of time that may be necessary to the collection of this or that piece of evidence. But mind the artifice. Under the sanction of the pretence formed by vague generalities such as these, what is true of no more than one cause out of a hundred, is applied to the hundred: a cause which might be despatched in twenty minutes—(and of this sort is by far the greater number of causes)—is made to occupy twenty years: and a cause, which, by the attendance of both parties, in the presence of a single judge, in an open judicatory, the bystanders, rendering the service that is pretended to be done, but never can be done by a judicatory of appeal, might be terminated without expense—is, for the sake of the profit upon the expense, nursed and kept alive; kept alive till the party, whose condition, in respect of pecuniary circumstances, is least favourable, is —if alive, alive in the pit of ruin, and his adversary more or less near to it.

Unfortunately for justice and for mankind, in regard to the use made of the word *delay*, an imperfection there is, under which, language seems, very generally, to labour. Two objects there are, for the designation of which there is but this one word, though, between the objects themselves, the distinction is not only clear and perfect, but, for the most important purposes, is continually requiring to be brought to view: namely, on the one hand, an addition stated as being made to an already allotted quantity of *time;* that statement not being accompanied with any consideration of the propriety of the so allotted quantity; on the other hand, an addition, the quantity of which is considered as being *excessive*. In this unfortunate ambiguity, the supporters of all systems of judicature contrary to the ends of justice, find a most useful instrument of defence. "Delay is, frequently, necessary to justice: namely, delay without excess: therefore, so" (say they) "is delay in excess; for delay in excess, is delay; and delay, you cannot deny, is necessary to justice." Such is their argument; and such the logic of it.

On the present occasion, speaking as he does, of delay as a tribute due to justice, in which of these two senses would this professor of justice wish us to understand the term he thus employs? Delay without excess? the proposition is a nugatory one. What ought to be done, ought to be done: such is the instruction conveyed by it. Delay in excess? the proposition is an absurd and false one.

2. Maxim the Second. *Precipitation is the most dangerous rock in the way of justice.* Here, after another subject (of which presently) has been passed on to, up comes the same fallacy again in other words. *Precipitation?* What can be meant by it, but *despatch*, or *promptitude in excess?*

As to the maxim, setting aside the rhetoric of it, what is the plain import of it? That the quantity of time you employ—or at least profess to employ—in the operations of judicature, ought not to be insufficient: it ought not to be what it ought not to be.

Let it but mean anything—give it but a determinate meaning—the very reverse of it will be seen to be true. Numerous, indeed, are the modes of mal-practice to which the term *precipitation* might, without impropriety, be applied; speaking in general terms, in regard to any operation whatever, that, in the case in question, happens to be necessary to right decision, the omitting to employ the whole or any part of the quantity of time necessary to the performance of the operation, and thereby putting an exclusion upon the operation itself: in particular, putting, in this way, an exclusion upon such or such an evidentiary document; upon the attendance of such or such a witness; upon such or such a material question to such or such an attending witness; upon the answer, or any part of the answer, that would or might have been given by him to such or such a question; upon such or such a comment that would otherwise have been made upon his evidence. But the sense, in which, of all imaginable senses, it seems most likely to be understood, is—the omitting to employ more or less of the whole time that would have been necessary to a man, to form, by means of *reflection*, a right decision, on such grounds of decision as, in all shapes taken together, have been actually presented to his view: in a word, a deficiency in the time necessary for reflection.

Precipitation in judicature being thus understood, and admitted to be a rock, now let us see whether, of all imaginable rocks, this is really the most dangerous.

Look to English judicature. Adverse as, in so large a part of its extent, the system is—uncontrovertibly adverse—to the ends of justice—still, taken as a whole, it is, perhaps, the least so of any as yet anywhere established:

Digitized by Google

strange indeed it would be, if it were not much less so than that of Spain. Of the two distinguishable branches of this system of procedure, namely, the natural and the technical, the only branch commonly in view is the technical branch: of this branch, the part most highly, most generally, and least undeservedly esteemed, is that in which the judicatory is composed of a professional judge, with a company of non-professional judges under the name of a *jury:* the jury, in the exercise of their functions, acting, in so far as it is their choice to do so, under the guidance of the judge. Now then, in this case, how stands the dangerousness? If, in the business of judicial procedure, the danger from precipitation were so great as supposed; in other words, if the mischief from it is so great and so frequent as supposed, here, it will be seen, we have a case in which it would display itself in its utmost possible magnitude. But how stands the fact? So small, if any, is the mischief, that in no one instance perhaps as yet, has it ever so much as attracted notice: in no one instance, at any rate, is complaint known to have been produced by it. Now then, note how the case stands: No sooner is the evidence with such comments, if any, as have been made on it by the parties or advocates on both sides closed, than, without so much as a moment's *delay* taken for reflection comes, if at all, the opinion of the Judge: opinion or no opinion, immediately again, comes thereupon, as often as not, the decision of the jury. The promptitude thus displayed—is it in the power of *precipitation*, taken even in the bad sense, to exceed it? The same promptitude, again, has it ever, on the part of any person, been the subject of complaint? No, never. When promptitude, in this degree, has place, does it ever enter into any one's mind, that any such condemnatory or disapprobative appellative as *precipitation* is, on that account, applicable to it? No, never. If promptitude, in such a degree, (and, in no higher degree can it have place,) is *precipitation*, precipitation, so far from being the most dangerous rock on which judicature can strike, might, with much more propriety, in the language of the same rhetoric, be spoken of as the harbour towards which it is to be *wished* that its course should be directed.

Never, surely, was aphorism more unfortunate! What is the evil to which, in the scale of evil, the highest place is assigned by it. The very evil which not only is, in every country, the least mischievous, but in the country, in which the warning is thus given, the least probable.

Delay, as above—delay, so long as it lasts—is injustice: for it is denial of justice: and, whether blame accompany it or not, the effect to the parties is the same.

In precipitation, unless misdecision be the result of it, there is no injustice: with it, there may be folly, but, from it, there is no injustice.

In regard to delay, thus it is as to its immediate effects, in both branches penal and non-penal taken together, and considered with reference to its effect in the particular cause in which it has place. In the penal branch, consider now its effects on the whole complexion and character of that branch. In so far as punishment has place, from *delay* in excess comes *severity* in excess: for by delay, and in proportion to the delay, the *value*, and effective influence of the punishment is diminished: diminished, by diminution of *propinquity*, and thence also of *certainty*. But, on the back of this evil, comes another evil. What is wanting in *propinquity* and *certainty* is then endeavoured to be made up for in *magnitude:* and thus we have *severity* in excess.

But, again, from *severity* in excess, and thence, as above, from *delay* in excess, comes *inefficiency*. For, as the punishment increases in *magnitude*, here again it loses in *certainty*. For the efficiency of the punishment depends, *cæteris paribus*, upon the frequency of the known instances of its infliction, compared with that of the known or suspected instances of the delinquency which called for it. But infliction depends upon conviction, and conviction depends upon the co-operation of all operators necessary: necessary, in the several characters of informers, arrestators, witnesses, Judges, and functionaries acting under the command of Judges: and, in all these classes, to an extent proportioned to the degree of humanity that has place in the character of the age and country, those who would otherwise be co-operators, shrink from the task.* In Spain, of all countries, warn Judges against precipitation! Warn then the snail against running herself off her legs.

Rhetorician! if you must have a rock, keep to your rock then, but reverse the name of it. For *precipitation* say *delay*, and you will speak true. *Delay* not *precipitation*, will then be your name for your "*most dangerous rock in the way of justice.*" Thus, then, you have a *rock*, on which, in Spain, ever since *Rome-bred* law, with its system of procedure, has been ruling, Justice has been splitting: a rock on which, unless that chaos, with its rocks, be speedily annihilated, justice will, ere long, split to pieces, and the constitution along with it.

When the justice necessary to the keeping of society together cannot be had from judicature, it is looked for from despotism. Then does despotism itself, as being the minor evil, put on not only the colour, but even the character of good: as such, it is looked for, called for, exercised,

* In so far as regards severity of excess, its power in striking the law with impotence, stands in the eyes of all, and by the acknowledgment of all, exemplified in England, and more particularly at this time. Applied to forgery, the mere name of punishment,—the punishment of death,—has given increase to the number of forgeries.

Digitized by Google

and, not altogether without cause, even applauded. And this is among the causes why, in the eyes of the lovers of despotism, a system of procedure repugnant in the extreme to the only true ends of judicature, is an object of indifference, or even of complacency.

Those who will have *rocks* cannot object to *harbours*. When factitious delay, the artificial rock set up by the confederated ingenuity of official and professional artists, stands in the way of justice—despotism, calm unruffled despotism, is the harbour, in which, whatever security is regarded as obtainable, will be sought. To the artists themselves, the change would be no evil, were they the only *harbour-masters*. But when in the hands of lawyers, despotism fails, recourse is had to priests and soldiers.

3. Maxim the third. "*The judicial forms are the shields of liberty.*"

The *judicial forms?*—*What* judicial forms? What, is not *said*, but what is insinuated, and doubtless meant to be understood, is—that such are the judicial forms of the Spanish edition of the system of Rome-bred procedure:—the system, under which the preacher of wisdom, in this shape, was acting, and under which, by the help of these convenient and well-worn aphorisms, he is thus endeavouring to find shelter. *Liberty*, indeed! What liberty? whose liberty? What in his dictionary means *liberty*? What? unless it be liberty to rulers to oppress subjects, and to lawyers to plunder suitors? Liberty, indeed! Why thus keep hovering over our heads in the region of vague generalities, but that he finds his procedure unable to stand its ground on the *terra firma* of individual and appropriate facts?

Be this as it may, how stands the case in reality? These *judicial forms*, what are they? What, but the *means* employed by judges in their progress towards the ends or objects, to which the course of the proceeding is directed, whatsoever are these *ends*.

Now, under the Rome-bred system of procedure in general, and under the Spanish edition of it more particularly, what are the *ends* towards which the course pursued by those who framed it, has at all times been directed? by those who, from time to time, have been employed in the framing of it, not to speak of the course pursued by those who, from time to time, have been acting under it. I will tell him what are these *ends:* they are the ends diametrically *opposite* to the ends of justice: they are the ends pointed out by the personal and other private interests of those by whom this power has been exercised: ends standing in constant opposition to the interests of the rest of the community, but more particularly to the interests of the *subject many*, in respect of the ends of justice: they are the sinister ends, to the pursuit of which the ends of justice have, to a greater or less extent, been everywhere made, and still continue to be made, a continually repeated sacrifice.

Liberty, indeed! shields of liberty! under the Rome-bred procedure anywhere—under the Spanish edition of it more particularly—is it of *liberty* that the forms employed are the shield? O yes! if, instead of *liberty*, we may read despotism, oppression, depredation, and corruption: with this one amendment, the maxim may be subscribed to without any the smallest difficulty.

What are the ends—the proper—the only defensible ends of judicial procedure? Direct, all-comprehensive, and positive end—*rectitude of decision:* collateral and negative ends, *reducing*, to the least possible quantity, the evils unavoidably produced by the pursuit of the direct end; namely, the evils comprised under the three heads, of *delay*, *vexation*, and *expense*.

Such being the only *proper* ends, what, then, are the actual ends—the ends actually pursued by those, by whom, in this, as in every other instance, the system of judicial procedure has been framed? If they have been men, these ends have everywhere been their own personal ends: the advancement of their own particular interests. And what have been those particular interests? On every occasion on which, in each man's view of it, his interest would be better served by misdecision,—misdecision accordingly: on all other occasions, rectitude of decision; this being pursued, according to the best of the man's judgment, for reputation's sake: for reputation's sake, that so, by probity, practised where it might be practised without sacrifice, power might be increased: that power, (for reputation is power,) under favour of which, improbity, coupled with impunity, might be practised, as often as advantage presented itself, in any sufficiently tempting shape, as the fruit of it. Thus much as to what regards the *direct* end of justice: then, as to what regards the *collateral* ends, the swelling, to the utmost amount, the aggregate mass of delay, vexation, and expense: the expense for the sake of the lawyer's profit extractable out of it: the delay, with its attendant vexation, for the sake of the opportunities which it affords for addition, to the amount of profit-yielding expense; of profit-yielding expense, in all cases; and of misdecision in every case, in which it presents itself as prescribed by personal interest in any shape, as above.

The founders of this same system, were they men? or, if not, what were they? If men, then so it is that, in the circumstances in which they acted, unchecked as they were, free as they were from all check, applied or applicable by the subject many, whose interests they were thus disposing of—such, in the framing of the system, could not but have been the *ends* that, from first to last, they had in view. For, on the constantly prevailing habit of self-preference, does the human species depend—depend, not merely for its happiness, but for its existence. No rule more important for the legislator's guidance; no rule, on which, with stronger determination, his eyes, should, on

Digitized by Google

every occasion, remain fixed; no rule, against which the eyes of men in general are more obstinately closed. Yes: self-preservation it is that is the *necessary* occupation, and, with the exception of maternal care, the only necessary occupation: Yes; on any extensive scale, social sympathy, and the conduct that flows from it, is an article of luxury—the luxury of the most highly polished life: the habitual enjoyment of it, the privileged endowment of here and there a superior and superiorly cultivated mind.

Delay, vexation, and *expense*,—these, in conjunction with *misdecision*, compose, in all its modifications, the aggregate mass of all the evils to which, taken by itself, the system of judicial procedure is liable to give birth. Add *uncertainty*, an evil, in the generation of which, the main body of the law, whether by its silence or by its language, shares and vies with the system of procedure: add these together, you have the aggregate mass of evil, of which is composed the patrimony of the fraternity of lawyers: of the man of law, in all his shapes: of lawyers, of all classes, and all ranks: of the attorney, of the advocate, of the judge, of his ministerial instruments: of these, and, above them all, of the patron, by whom the judge, in all his shapes, is appointed. Delay, vexation, and expense, as well in their natural and inevitable, as in their factitious, and purposely organized, forms: of evil in all these shapes, as well in that in which it is the purposed work of man, as that in which it is the work of that power, into the designs of which no human eye can penetrate. No: in no branch whatever, in no place, at no time whatever, can any system of government, that we see, or ever have seen established, have been directed to any other object than the particular good of those by whom it has been established: to the good of the *subject many*, no further than in as far as it appeared to the *ruling few*, that, by serving those beneath them, they were, in some shape or other, rendering service to themselves. From the eyes of the multitude, these truths, incontestable as they are, have almost universally been hidden: hidden by a covering of the thickest and most universally and indefatigably employed imposture. Yet, only in proportion as those same eyes are open to these same truths, can man be freed from the oppression, depredation, and debasement, under which, in every country, he still labours. In every country? yes: even in the Anglo-American United States. For, though not at all by despots, nor much by *priests*, even there is he deluded. Yes: deluded he there is; and in proportion to the delusion, preyed upon and oppressed by lawyers; by England-bred lawyers, whose iron-rod, having been in the night of servitude, is still in the days of independence suffered to be wire-drawn out of a system of sham law, and that of foreign growth—the English common law.

The good, whatever it be, that is derived from the judicial system, from whence, then, is it derived? From those things which are actually done? In a small degree, yes; but in a very small degree: in a much greater degree, from those things which, in the case in question it is how erroneously soever supposed, would, if the experiment were made, be done.

In the teeth of their own experience, deluded by those false conceptions, which, in books and speeches, the lawyer-tribe, with one accord, are so indefatigable in disseminating, it is among the expectations, for example, of Englishmen in general, that, for injury in any shape, law will afford them an adequate compensation. All the while, the fact, the incontested and incontestable fact is, that to a vast proportion, probably to more than nine-tenths of their number, the obtainment of any such compensation is, in every case, impossible. And, for the opposing a perpetual bar to any increase in the number of those to whom it shall be possible, leaders in both factions, corruptionists in possession, and corruptionists in expectancy, stood up but t'other day, stood up in declared confederacy. Stood up, and where? Even in that House, the very name of which is so happily become a name of reproach in Europe.

Thus stands the matter in England; the country in which, till the birth of the Anglo-American United States, the plague of lawyers was least destructive. But, if thus in England, how in Spain can it fail to be still worse?

To return to our official preacher of delay, the no less learned than gallant advocate of *Forms*, in the great cause of *Forms against Substance*. The body of his sermon, is now, it is hoped, understood. Come we now to the practical inferences.

On my zeal, says he, "I exhort them" (the public) "to depend." On his zeal, for what? Thus the explanation is at the same time given: his zeal to do what he is professing to do: "placing myself," says he, "above the influence of the passions, and listening only to the voice of justice!" And this zeal—by what was it called into action? By those laws, of course, under which he was acting: by the laws he speaks of, as those "which regulate the order of proceeding," those "inviolable laws" (so he terms them) "which," he says, "are the only safeguard of liberty."

Neither with the person of the gentleman in question have I any acquaintance, nor, in relation to the reputation he bears, have I received any the slightest intimation: in relation to him, all that I have any conception of is—the official situation he was occupying, and the principles of the system of law under which he was acting. Now, of that situation, indeed, my conception wants something of being determinate: but, of the system of law in question, my conception, is, so far as regards the present purpose, as determinate as I could desire it to be. This premised, it will, I hope, be sufficiently understood, that, in whatever I

Digitized by Google

may find occasion to say of him, it is to the species only, and not to the individual, that it can have been intended to be applied. And so then, of this string of phrases is composed the ground, on which the gentleman expects us, our eyes shut all the while against the manifold matters of fact which the case furnishes us with, expects us to rest the unbounded confidence which, by the word *depend*, he calls upon us to repose: as if these words were not just as easy to write as an equal number of other words of the same length: as if acting were less common upon a bench than upon a stage: as if it were not just as easy for the most dishonest, as for the most honest man upon earth, to commit to paper, or to the air, phrases of this sort, in whatever quantity the purpose were thought to require: as if the most notoriously rapacious and sordid hypocrites this country knows, were not every day, not only pouring forth professions of virtue such as these, but confirming them with appeals to God, and ever-ready tears. In answer to this call, as one of the public, I will here take the liberty of stating to him my conception of the course which, under the invitation given him by those same "*inviolable laws*," I "*depend*" upon his having pursued. For the gratification of those same "*passions*" to the influence of which, for no other reason than that he has been at the trouble of saying so, he *desires* us to believe him to be so effectually superior, he has been employing these facilities which, for that same purpose, under the cover of that veil of impenetrable secrecy, which they have so religiously thrown over all judicial proceedings, those same laws have, in their bounty and their wisdom, been so careful to place in his hands. Proceeding then, according to established order, (for everything is as nothing in comparison with established order,) he has begun with taking an account of all such delinquents, whose power of hurting him is such as to exempt them from the necessity of coming to market for his services: in favour of these, the power, the unlimited and irresponsible power of pardon, which, by the wisdom of those same laws, has, by its not being nominal, been rendered but the more effectually real—has been exercised gratis. Another class, which he may, or he may not, have taken the trouble of forming, has been composed of those, towards whom he has found, in the sentiment of sympathy—in any shape, public or private — a motive, of sufficient strength to engage his exercising the godlike attribute upon the same disinterested and magnanimous terms. These two unprofitable classes being deducted, remained the class composed of all such other persons, in whose instance, upon due inquiry, a capacity of showing gratitude, in the pecuniary, or any other more refined, though not less valuable shape, has been found: and, in these instances, he would have been wanting in what was due to both parties, if he had not taken the requisite measures for improving the capacity into act. Uniting in his person, (if my inference from his official title be not erroneous,) the military character to the judicial, he would have been an offender against the laws of gallantry, had he neglected the opportunity afforded him by those same "*inviolable laws*," for applying beauty to its appropriate use. In civil cases, under the French edition of Rome-bred procedure, the goodness of a man's title depended, nominally, upon contracts or conveyances, really upon the beauty of a wife, sister, or daughter, in the eyes of the most influential Judge. It was manifestly for this, amongst other reasons, (for there could not have been a better,) that, under that system, personal solicitation was not only permitted but exacted.

When using the word "*depend*," I said—this is the sort of conduct that I should *depend* upon his having pursued, it was because, in the translation of the judicial document in question, *depend* was the word I saw before me. Here, lest I should be doing injustice as well to the gallant and learned gentleman as to myself, *depend*, it may be proper I should confess, would, in my view of the matter, be rather too strong a word for the case. Dependence on the part of the contemplating mind corresponds to certainty, on the part of the event contemplated: probability, though a greatly preponderant probability, is all that I see here. Such are the diversities in human character, that, when corrupt laws, the fruit of corruption, have done their utmost to lead men into temptation, this or that individual there will still be, in whose instance effectual resistance will have had place. But, utterly unacquainted as I am with everything belonging to the Gentleman in question, except his situation, and the system of law under which he has been acting, if I were obliged to lay a wager, I would lay at least twenty to one, not to say a hundred to one, that, with any such degree of inflexibility as that in which we have seen him professing resistance, he has not resisted.

To make anything like a complete statement of the grounds of this above-mentioned persuasion, would require a volume: it would require a complete exposure of the system of those same "*inviolable laws*." But, for the justification of such a persuasion, one single feature in that system is quite sufficient; and that is —the impenetrable *darkness* in which the whole procedure is enveloped. You have seen already the use and reason of this darkness. In *Spain*, a man must be more or less than man, if he does not put it to this use. For *Spain*, put *Portugal*, *Italy*, *Germany*: take any country where *Rome-bred* law reigns; the case will be little varied. Cases excepted too minute to be here worth mentioning, take this for an incontestible rule—*Where there is no publicity*, (I speak of judicatories,) *there is no justice*. Oppression, depredation, corruption—all *that*

Digitized by Google

there is—everything rather than justice. Under Rome-bred law, in the pleadings of advocates, in here and there an instance perhaps, you will see publicity admitted. In pleadings, yes: but upon what ground? Upon no other ground than that which is formed by evidence, manufactured at pleasure under the veil of secrecy: the cause thus corrupted in its vitals, and in the judicatory, responsibility destroyed: destroyed—the thing itself, and thence the sense of it—by the *multitude* of the judges. From the stage, at which, by forming a sort of partial succedaneum, how inadequate soever, to an ungarbled public, the multiplicity of Judges might apply some restraint to corruption—from this stage it stands excluded: the stage at which it cannot be of any such use, *that* is the stage at which it is admitted. By the presence of almost any man, much more by the presence of one invested with equal authority, a Judge might, by the fear of divulgation, be deterred from any such palpable injustice, as the putting an ungrounded exclusion upon a witness, or suppressing or falsifying any part of his evidence. But when, after a decision already pronounced by one judicatory, a question comes in the way of *appeal* before another, and that other a many-seated one, nothing is there to hinder any one member of it from giving to his vote the direction, whatever it be, that corruption indicates. As to fear of *divulgation*, no place is there for any such thing. How should there be? there is nothing to *divulge*.

So far as concerns individuals all this being mere supposition, let us close with another supposition which, to every generous and feeling mind, will be a so much more acceptable one. The conduct of the functionary is now in perfect conformity with his professions: it is without spot. How irksome must it then not be to him, to be all along acting under a system, under which, while he is acting, he cannot, by any discerning mind, be regarded as otherwise than more or less corrupt!

A system, by which he is placed in so degrading a situation—how odious must it not be in his eyes! how anxious must he not be, to embrace with the utmost promptitude every the smallest chance for seeing substituted to this foul and technical system a pure and natural one! "Foul," I have said, *and* "technical." But, when applied to a system of judicial procedure, *foul* and *technical* will one day be universally understood to be synonymous terms: *technical* being said of it, *foul* will be put aside as superfluous.

As to the *screen* for *corruption*—the screen made out of the panegyric on *delay* and *forms*, I have seen it in use these five and fifty years: the name of the manufactory is visible on it. *Esprit des loix* the manufactory: *Montesquieu* and Co. the name of the firm: a more convenient or fashionable article was never made.

In Montesqu[illegible] Blackstone, whoso[illegible] has mi[illegible] ape to attack or to

defend, may find this and that and t'other thing, that, with more or less exactness of application may be seen or made to fit his purpose. If your wish is to put the business off, quote Montesquieu—you may put it off as long as you please: if your wish is that it shall come to nothing, there is Montesquieu who will do this for you likewise. In addition to increase of delay, vexation, and expense, the forms invented by the lawyer tribe have had everywhere for their object the enabling them to bring a suit to nothing whenever they are so disposed. What has been done is found to be unconformable to this or that same rule or form: to a rule or form already made, if there be an already made rule or form that is near enough to the purpose; if not, to a new form, which, on pretence of being found ready made, is made to suit the purpose. Behold here the key, to a part, perhaps the greatest part, of the absurdities, portentous as they are, which may be seen swarming in every system of procedure that was ever made. Made: to which must be added—or pretended to have been made, in so far as it is not exhibited in any other shape than that of *common*, alias *unwritten*, alias *imaginary*, alias sham and counterfeit law.

Montesquieu was a man of gallantry—a *bel esprit*—a fine gentleman, and a philosopher. But, before he was anything of all this, he was a lawyer: a lawyer, bred up in the corruptions of Rome-bred judicature: a French Judge with the rank of President, in one of those oppressive and predatory corporations called *Parliaments;* a name which, in all its senses, will one day be as universally a term of reproach as *the Inquisition* is already. With all his merits—and pre-eminent most unquestionably they were—it could not escape his sagacity, how intimate the connexion was between his rank in society, and the respect entertained for the abuses by which that rank was conferred.

A man, who has an abuse to defend, must for that purpose, were it only for decency's sake, have a something with which he may be supposed satisfied. As to the something *here* in question, if our Colonel Fiscal was more of a Fiscal than of a Colonel, it is no more than he himself may naturally have provided himself with, and kept for use: if he was more of a Colonel than of a Fiscal, some other person who was a fiscal without being a colonel, put it perhaps into his hands. It will continue to be needed and to be used, so long as any particle, either of the nuisance called *Roman common law*, or of the nuisance called *English common law*, remains unextirpated.

The disorder has been seen: it admits but of one remedy. The disorder has for its cause a system of procedure, produced in a dark age by interests and designs, directed to ends opposite, in the degree that has been seen, to the ends of justice. The remedy, if it ever has any, will be constituted by a system of proce-

Digitized by Google

dure, produced in an enlightened age by interests and designs, directed from the first towards those only legitimate ends, and, from first to last, pursuing the same undeviating course. The difference between a work directed to the one, and a work directed to the other of these opposite objects, will, in and by such a work, have been rendered visible to all eyes. In the hands in which the power of the country is —in these hands, will be then the choice.

ADVERTISEMENT TO TRACT THE THIRD.

In the beginning of November 1820, not long after the time when the last of the four letters just published "*On the Liberty of the Press and Public Discussion*," was sent to Spain—the letter, now for the first time printed in the original, was sent by a mercantile friend of Mr Bentham's to a correspondent at Lisbon, to the intent that it might be there translated into Portuguese, and the translation published. Of that paper, whatever was the cause of the failure, no tidings could ever be obtained. When all prospect of its answering its purpose at Lisbon was at an end, another copy was at length sent in the same manner to Oporto, and had better fate. That at Oporto it found a translator, and the translator a printer; and that copies of it found their way to Lisbon, is out of doubt. Of that translation, indeed, no copy is yet known to have reached England. What is much more to its advantage, the work has, however, since then, received a translation, and that translation publication, from the masterly pen of Dr Rocha, in his monthly paper, intituled "O Portuguese:" in which the matter of it is applied and enforced by comments, as well as recommended by the warmest eulogiums.

Not long after the news arrived in London of the formation of the Portuguese Cortes at Lisbon, a packet, containing a copy of Mr Bentham's works, such of them as could be collected, was sent for that metropolis in the same manner. The design was—that communication should be made of the contents in such manner as should be found practicable, and judged most proper, to the newly constituted authorities:—it was equally unfortunate. The failure being at length ascertained, another such parcel was sent, and produced that sensation, of which a communication to Mr Bentham from the Cortes, a translation whereof is annexed in the form of an Appendix to this paper contains the expression. By him, nothing had been written on the occasion or on the subject either time, to any person either here or in Portugal.

1*st July*, 1821.

TRACT, No. III.

Letter to the Portuguese Nation, on antiquated Constitutions; on the Spanish Constitution considered as a whole, and on certain defects observable in it; in particular, the immutability-enacting, or infallibility-assuming, the non-re-eligibility-enacting, the sleep-compelling, and the biennialitу-enacting clauses.

Portuguese!

You hear me from England. You will have heard of me from Spain. Hear the voice of an unbought, an unexpectant friend. Hear a voice, which, for more than fifty years, has been labouring to qualify itself for addressing you as it does now.

1. First, as to Constitution. Take example by your friends in Naples. Do as they did. Adopt it as a mass: time admits not of picking and choosing. Exceptions, few in number, simple in conception, mighty in import, I will point out presently. In the scheme of representation, you see the basis. Take it for all in all, nothing as yet practicable can be so good for you. For them it is good; for you it will be still better: this you shall see. To find ready made a work already so suitable, is a blessing too great for expectation; an advantage beyond all price. Somewhat which I should otherwise have said, I am stopped from saying by an odd accident. With the exception of some details, which necessity excluded from Spain, it is exactly the same with the scheme which, without concert, I was planning exactly at the same time. Mine, ere you receive this, will be courting your acceptance. In both, you may see *universality*, *secrecy*, *equality*, and *annuality* or *biennialitу* of suffrage; in mine, *annuality;* in the Spanish, *biennialitу*, substituted to annuality by a local necessity—a necessity which you will see: and which, unless you make it so, is not yours. In mine, as in the English, *one* stage of election: In this Spanish, *four*. Oh monstrous complication! But perhaps it could not there be otherwise. I am sure it could not have been as mine is.

2. Now secondly as to Cortes. Look abroad or not, a Cortes you have of course. But, un-

Digitized by Google

der the same name, lurks the difference between life and death. The question is between fresh and stale. The stale was bad, even when fresh: what then would it be now? The last you had was in 1640: 1640 is not 1820: these figures suffice for proof. The Cortes of 1640 is that which the late regency would have given you; it therefore suited their purpose; it therefore would have defeated yours: another short argument, yet of itself a sufficient one. Before that of 1640, had there been a thousand, in none of them would the interest of the *subject many* have been the first object of regard: in none of them any other than that of the *ruling one*, and that of the *sub-ruling few*. The one thing needful is that by which the interest of ruler is made the same with that of subject; of representative with that of constituent. This is what the Spanish constitution may be brought to do for you. This is what your old stale constitution never did, nor ever would be brought to do, for any body.

Exceptions I have prepared you for.

Exception 1. The *immutability*-enacting, *alias* the infallibility-assuming clause. This is what my respect for Spain makes me almost ashamed to name. Amendment—none for eight years to come, and nobody can say for how much longer! As well might it have been said, no amendment till the end of time. The longer the thing continued without change, the stronger would be the reasons against change: the longer would be the experience of the needlessness of change. Immutability in the work, assumes infallibility in the workman: infallibility, (for such was the hurry,) without so much as time for thought. I, who have been thinking of such matters for more than fifty years, would no more think of giving a twelvemonth's immutability to any such work of mine, than I would set myself up for that Being who is as immutable as infallible. Nor, though infallibility were conceded, would it reconcile the arrangement with sanity. Tying up all other hands, the legislator tied up his own in the same bonds. The infallible of today, will he not be at least as infallible tomorrow? Or would infallibility decrease as experience increased.

Alas! this is not the only instance in which what is most absurd upon the face of it may be made not only reasonable but necessary, by a reason which is not, because it cannot be, avowed. For this absurdity, glaring as it is, Spaniards (so they tell me) had a reason, and I fear too good an one. What was feared was a relapse. The resource was—to anchor the constitution at the highest mark at which the flux should carry it, and thus to guard against the reflux which the remnant of despotism could not but labour to produce. The anchor dropped, as often as any retrograde proposition shall be made, a short answer is now ready for it. "The constitution is unchangeable: you have sworn to it: this measure would change it."

Portuguese! thank heaven! this reason applies not to you. You are not cursed with the everlasting presence of an arch-enemy: an enemy who, if a man, is, in his situation, necessarily an implacable one.

2. Exception the second: the *non-re-eligibility* clause: Articles 108, 110, the clause which excludes from the next Cortes all the members of the first. Experience is the mother of wisdom, says a proverb which can hardly be peculiar to the English language. No, says the author of this arrangement: not Experience, but Inexperience. Either *that* is what he says, or *this*:—In a legislative assembly, wisdom is worse than useless.

Oh but (says somebody) men might, but for this, give, each of them, perpetuity to his power. Oh yes, so they might, and would: were it not for the power which you give to the people—that power of removing them—all and each of them—at the end of every two years: which two years, were it not for Ultramaria, would be but one year. What! is it then so sure a thing, that, under a free mode of election, should the majority of the representatives show themselves unfit, the majority of their constituents would re-elect them notwithstanding, and that such would be the ordinary result? If so, then not only is this system of representation radically a bad one, but so is every system of representation whatsoever.

Appropriate moral aptitude—appropriate intellectual aptitude—appropriate active talent—in these may be seen the three elements, of which, in this as in every other situation, the perfection of appropriate aptitude is composed. Which of these elements is it that, by this exclusion, it is intended to secure? As to appropriate *moral aptitude*—the inhibition does not merely *prefer* untried men to tried; it puts an inexorable exclusion upon whoever has been tried; either it prefers chance to certainty; or, to secure certainty, it excludes it. Apply this to *appropriate intellectual aptitude*, or (to use the word of parade) *wisdom:* here the absurdity is still more glaring. *Moral aptitude*, or if you please, *probity*, having more in it of a negative than a positive aspect, if, at the commencement of a man's career, it is entire, habit cannot, as to its principal part, make any addition to it. Not so *intellectual* aptitude. Especially with reference to a situation such as that in question, is it possible, decay of faculties apart, that at the end of the man's career, be it long or short, it should not be greater than at the commencement? And, in regard to *active talent*, the case is too nearly the same to need distinguishing.

If rawness is a security for aptitude, let not the public, in any part of the field of thought and action, be without the benefit of it. Apply it to the fine arts: apply it to the ordinary arts. When a history painter has practised painting for two years—(I should have said for eight months, for in the Spanish Cortes

Digitized by Google

year, there are but four months)—inhibit him then from practising it any longer: at any rate, till an interval of two years has elapsed: and so in the case of the smith, the carpenter, and the weaver. Or is the perfection of appropriate aptitude so much more quickly as well as surely attained in legislator's work, than in smith's and carpenter's work?

Note now the application which this same *non-re-eligibility* clause makes of the power of punishment and rewards. When no delinquency is so much as imputed, it inflicts punishment without mercy. The utmost punishment which it is in the power of constituents to inflict on representatives in case of the most enormous and flagrant breach of trust, is—forbearing to re-elect them. This punishment the clause inflicts without discrimination upon the most guilty and the most meritorious: upon the most meritorious, upon no other ground than that of a possibility of their having been guilty, refusing to them the possibility of proving themselves not to have been guilty, in the eyes of their natural Judges; those Judges who, in each individual case, have before them all the means of judging which the case affords, while the legislator has not any.

True it is, that, after two years of destitution, the capacity of being re-elected revives. But this circumstance only gives complication to the case, without making any material change in the mass of argument, and without making any change in the practical conclusion.

Thus to neglect details and proportions, is among the effects and marks of rawness in the business of legislation. Against some experienced or apprehended evil, an expedient presents itself, as affording the promise of a remedy. Imagination, heated by self-love, swells it: it takes possession of the mind, fills up the cavity, and keeps the door fast shut against all counter-considerations.

In case of delinquency, deemed such by the competent judges, in case of delinquency, how pernicious and flagrant soever, it secures the delinquent against the natural punishment—the punishment flowing, without need of prosecution—flowing as it were of itself, out of the offence;—arising without any of that uncertainty, delay, vexation, and expense, which in a greater or less proportion is inseparable from judicial procedure: and which, in the system most eulogised is swelled by an enormous mass of all those evils artificially accumulated. This punishment consists in the suffering produced by the loss of the power so misused: a result, for the production of which nothing more is needed than a sort of negative operation, if so it may be called, in the situation to which the power stands attached.

On the other hand, at the same time, in case of good conduct, it excludes him from the correspondent and natural reward: in case of good conduct, how pre-eminently meritorious soever.

To obtain admission for such a regulation, something more must, of course, have been said. But I should be curious to see this something: and to see it confronted with what is above.

Let me recollect. A something more, I think, I have sometimes heard of. Of the annual recurrence of the capacity of being removed, the result (I have heard say) is the perpetuity of inaptitude. To its paradoxicality does this position seem to me indebted for whatever reception it may have obtained. When, from a mind to which a certain degree of sagacity is ascribed, a position wearing upon the face of it a hue of absurdity is seen to come, credit is apt to be given for some latent truth at the bottom of it. But, in this case, mark the logic. Of the supposed effect—namely, inaptitude in some shape or other—the existence is, in the first place, taken for granted. Taken for granted? But on what ground? For it, there is no evidence: against it, there is—there never can fail to be, a host of evidences—the opinions of all who, by concurring in the election, have given their attestation to the man's aptitude. Sitting in his closet, taking in hand this or that individual case, the author of the paradox takes representatives in the lump, without evidence, and without other ground than this theory of his, pronounces them unapt. And what representatives? All that have ever sitten, or can ever sit a second year, after having sitten a first: or, if these numbers be objected to, let him change them, till he comes to say—all who have sitten a fifty-first year after sitting a fiftieth. Individually taken, what does he know of them? next to nothing; perhaps nothing; while the electors know, each of them, of the representative he had voted for, as much as he pleases. But the electors, those too in their situation he pronounces unapt: unapt to form any judgment respecting the aptitude of their representatives. These electors—how many of them does he know—know in any such sort as to be qualified for pronouncing a judgment on *their* aptitude? not one perhaps in a hundred.

3. Exception the Third: the *sleep-compelling* clause. Articles 106, 107: duration of the time for business, three months of each year in course; one month more at the utmost; nor this, but at the instance of the king, or of two-thirds of the deputies: forced sleep, eight months or nine months. So much for actual *law:* now as to *reason* and *expediency*.

If there be one thing more impossible than another, surely it will be—the saying at any time of the year, upon any sure grounds, what time may be requisite and sufficient to the business: to the business that may, in the course of the remainder, happen to require to be done. If such must still be the case—in a year when everything has long been settled, how much more necessarily must it not be the case, at a time at which scarce anything has as yet been settled? If such be the case, where the business is familiar to the majority

Digitized by Google

of the hands, how much more necessarily must it not be the case, when, as yet, whether by necessity, or, as above, by institution, there can be no hands to it, but new ones? If such be the case, in a nation which (like the French) is more apt to go beyond the proper pace than fall short of it, in how much greater a degree must it not be the case in a nation, which, if proverbs are not slanderers, is so much more apt to fall short of the mark, than to go beyond it? Under these circumstances, comes the Spanish legislator, and inhibits himself and his fellow-workmen from working more than three months out of the twelve in ordinary cases, more than four months at the utmost in the most extraordinary cases. Thus then it is, that the union of King and Cortes—the supreme power in the state, is doomed to impotence. To impotence, and by what? By a spell composed of half a dozen lines, for which, at any rate, not a grain of reason has been assigned or produced, whatever may have been found.

4. Example the Fourth; the *bienniality* clause.

Another amendment, my friends, you may perhaps see reason to make: though it shrinks into insignificance when brought into comparison with any one of the three former. This is, the substituting annuality of election to the Spanish bienniality. Of the bienniality, the cause is evident enough: it lies in *Ultramaria*. Had the duration given to the trust been no longer than one year, a quantity of time equal to the whole of the time allotted to the business they will be sent for, might have been consumed in voyages and journeys to and fro: as it is, scarcely more than half this proportion of time will perhaps be thus wasted.

Ultramaria being thus mentioned, let me congratulate you, my friends, on your being unencumbered with this nuisance. The King of the Brazils has already eased you of so much of it: of that part, in comparison with which all the rest is next to nothing. This remnant, I take for granted, you will sit still, and see him keep or take, without any attempt to hinder him. John the Sixth will not wage war with John the Sixth: the European King with his American self; the constitutional King, with the as yet non-constitutional King. You will look down with an eye of sympathy on your neighbours the Spaniards, who are still encumbered and drained by the sort of nuisance of which you are rid. Unite yourselves to those same neighbours by the closest bonds. I dare not speak the nature of them. You have the same interests: you have the same dangers: at the worst, forbear to add to those dangers by any disagreement between one half of the peninsula and the other half.

Note now, one in particular, of the bad effects of an immutability-enacting clause. Inhibiting *legal*, it necessitates and produces *anti-legal* changes. To amendment, it substitutes violation —violation of the law—and by whom? By the legislator himself: by him whose example is the highest and most impressive of all examples. If, in his breast, the propensity to violation finds no bar, how can it be expected it should in any inferior ones? Such, then, is the tendency, at least of an immutability-exacting clause, to plant anarchy, and to destroy confidence.

Now for an example. In article 108, "the deputies," it is said, "shall be renewed *entirely*, every two years." Lest this should not be precise enough, by article 110, the deputies cannot be elected "a second time without another deputation intervening;" that is, (adds the zeal of the English translator,) "a member is not eligible to two successive parliaments." Thus stands the law. How, under this law, stands the fact? Amongst its members, this second Cortes beholds in multitudes, and beholds with universal congratulation, those who had sitten in the last preceding Cortes. In the decree, by which the constitution was established, was any amendment made as to this clause? If yes, then was the immutability clause violated; if no, then was the non-re-eligibility clause violated.* Which of the two was the case, has not reached the ear of

JEREMY BENTHAM.

*** In the original edition there is an Appendix of documents relating to a "Communication from the Portuguese Cortes to Mr Bentham, respecting the Translation of the whole Collection of his works into Portuguese by order of the Government." These will be found already

---

* On the subject of non-re-eligibility, the author will be found to have modified his views when he came to express them more definitively in the Constitutional Code.—See Book ii. Ch. vi. Sect. 25, (vol. ix. p. 172.) The grounds on which he chiefly founded his plan of exceptions to re-eligibility are, that a supply of competent and experienced persons may by means of it be kept in existence to afford the electors a free choice: and the arguments employed are not contradictory to those given above.—*Ed.*

Digitized by Google

printed in "Codification proposal," vol. iv. pp. 573–4, Nos. 1, 2, and 3. The Appendix is followed by this addendum:—

In the *Traveller* of Tuesday, July 17, 1821, appeared, and from thence in other papers appeared, the following paragraph sent from the Post-Office as being a translation from a Portuguese paper:—

"Lisbon, June 29.—In the Sitting of the Cortes of the 26th, a letter from Mr Jeremy Bentham was read, and the President said, the Assembly could not but be highly gratified with the approbation given to their labours by the first political writer of Europe. It was ordered to be printed in Portuguese and English, not to lose the force and beauty of the expression."

Digitized by Google

LETTERS

TO

COUNT TORENO,

ON

THE PROPOSED PENAL CODE,

DELIVERED IN BY

THE LEGISLATION COMMITTEE

OF

THE SPANISH CORTES,

APRIL 25TH, 1821.

WRITTEN, AT THE COUNT'S REQUEST,

BY JEREMY BENTHAM, ESQ.

FIRST PUBLISHED IN 1822.

Digitized by Google

CONTENTS.

Page

ADVERTISEMENT - - - - - - - - - - - - 489

LETTER I.

INCOMPLETENESS UNAVOIDABLE—PUBLICATION INDISPENSABLE.

Occasion—Inadequate this Examination—A pre-established Standard wanting—A Standard announced—This Correspondence must be public—Why? - - - - - - 490

LETTER II.

FREE EXAMINATION COUNTERACTED.

On the course taken by the Legislation Committee, to Prevent, otherwise than by Punishment *eo nomine*, the Free Examination of their proposed Penal Code - - - - - 493

LETTER III.

FREE EXAMINATION PUNISHED.

On the course taken, for Preventing, by means of Punishment *eo nomine*, all effectual Indication of Imperfections in the existing Political System, the proposed Penal Code included - 505

LETTER IV.

IMPROVEMENT EXCLUDED—NATIONAL VOICE SILENCED.

On the ulterior means, employed for Securing against Amendment, all Imperfections in the Political System, and for preventing the National Will from manifesting itself - - 514

LETTER V.

THE MANY SACRIFICED TO THE FEW.

Further grounds for the apprehension, that, by the proposed Code, the interest of the Subject Many is, designedly or undesignedly, sacrificed to that of the Ruling Few - - 516

LETTER VI.

RIVAL WORKS EXCLUDED—FREEDOM OF THIS APOLOGIZED FOR.

On the anxiety, of the Legislation Committee, to keep the door of the Cortes shut, against Works coming into Competition with their own—Conditions on which Sanctionment is Recommended—(Necessity of the free tone of these Letters) - - - - - 535

LETTER VII.

SUPPORT SOUGHT FOR RELIGION IN SLAUGHTER AND PERSECUTION.

On Religion, and the plan, pursued in the proposed Code, for the Support of it by Death and other Punishments - - - - - - - - - - - - 546

Supplemental Advertisement - - - - - - - - - - - 551

Digitized by Google

LETTERS TO THE CONDE DE TORENO.

ADVERTISEMENT.

THE history of the present publication is as follows:

At the writing of the ensuing Letter, in so far as a judgment, which it has more than once happened to me to hear pronounced, is correct, —the writer of it—the *Conde de Toreno*—one of the Deputies to the Spanish Cortes from the province of Asturias, of the 149 European Deputies the only one whose name is a titled name,—was one of the most influential men, not to say the most influential man, in all Spain.

On the 9th of August, 1821, without any antecedent intercourse, or previous expectation on my part, I had the honour of receiving it from him. It is in the following terms:—

PARIS, *le* 6 *Août* 1821.

Monsieur J. Bentham,

MONSIEUR,

Notre commun ami Mr Bowring veut bien se charger de vous faire passer le volume ci-joint, qui comprend le projet du Code pénal présenté par le Comité à la deliberation de Cortes, qui doit avoir lieu l'hiver prochain. Vous y verrez des choses bonnes, d'autres fort mauvaises. N'allez pas pourtant vous effrayer, Monsieur, des articles qui parlent sur la religion: celà ne passera pas: le tems des persecutions en Espagne n'existe plus, et, malgré toutes les lois, il y a dans le fait une tolerance très grande. Je soumets, Monsieur, à vos lumières et à la profondeur de votre esprit, et de vos connaissances, ce projet. Ayez la complaisance de me faire passer vos observations, d'ici aux derniers jours de Septembre, que je dois retourner en Espagne: je vous en serai extrêmement redevable: j'en profiterai dans la discussion. A qui pourrais-je en effet mieux m'adresser, qu'au constant defenseur de l'humanité, et au profond écrivain de tant d'ouvrages célèbres sur la legislation!

Soyez sûr, Monsieur, du plaisir, et même du devoir, que je me ferai, d'écouter vos conseils dans cette matière, et de l'empressement que je mettrai toujours de vous offrir l'hommage de mon admiration, et de ma profonde considération.*

LE COMTE DE TORENO.

On the 22d of that same month (August, 1821,) and not before, I received the work which it announces.

On the 11th of September 1821, the Count being still at Paris, I sent off in manuscript, directed to him at that capital, by the post, the first of these seven Letters. The succeeding ones were directed either to him at Paris, to the care of the Spanish Mission there, or to him at Madrid. The day, on which the last of them was sent off, was the second of November, 1821.

The reader, as he proceeds, can scarce fail to be more or less curious, to have some conception of the result produced by it, on the part of the two distinguished statesmen principally concerned:—*Comte Toreno*, at whose instance, the observations were made and communicated; and *Mr Calatrava*, Chairman of the Legislation Committee of Cortes, composed of five members, by whose names the work which is the subject of them stands authenticated.

To this curiosity, such imperfect satisfaction, as is in my power, is here afforded. Its principal aliment will be—a second Letter, of the 26th September, 1821, from the same illustrious hand. The reader will naturally enough ex-

---

* TRANSLATION.

PARIS, 6*th August*, 1821.

Mr J. Bentham,

SIR,

Our common friend Mr Bowring has the goodness to undertake to forward to you the accompanying volume, containing the project of the Penal Code, presented by the Committee for the deliberation of the Cortes, at its next winter's meeting. You will see in it some good things, others very bad. Do not however frighten yourself, Sir, about those articles which speak of religion: they will not pass: in Spain the time of persecutions is no longer in existence: and, spite of all laws, a very extensive toleration has place in fact. I submit this proposed Code, Sir, to the consideration of your enlightened mind. Do me the favour to convey to me your observations on it between this and the last days of September, at which time I shall be on my return to Spain. I shall be highly obliged by your so doing. I shall make my profit of them in the course of the discussion. An address of this sort—to whom could it be made with more propriety, than to the constant defender of the principles of humanity, to the profoundly thinking author of so many celebrated works on legislation?

Be assured, Sir, of the pleasure, and even of the sense of duty, with which I shall attend to your suggestions on this subject, and of the eagerness with which I shall embrace every occasion of offering to you the homage of my admiration and of my high consideration.

LE COMTE DE TORENO.

Digitized by Google

pect to find it in this place. But as, at that time, the three first of these Letters of mine were on Count Toreno's table, any conception, which could be conveyed by that Letter of his to a person not acquainted with the contents of those same Letters to which his bears reference, would be altogether inadequate. For this reason,—this, together with all such further explanations as can be given, are referred to the conclusion of these Letters, and will be found under the head of *Supplemental Advertisement*. Suffice it in this place to mention, that, by that second letter of the Count's, his consent to that intention of publication, which the reader will find declared by me, is signified.

Note.—In Letter I. (p. 491,) the reader will see certain *positions*, mentioned as designed to accompany the offer of an all-comprehensive and rationalized Code; and to serve as heads to so many sections in that address. In the list of these positions, though substantially they remain the same, considerable changes in respect of order and expression have presented themselves: and the tenor of the offer is intended to undergo a correspondent change. In the four first, no change is proposed to be made. But to the seven succeeding ones, the eight which here follow are now intended to be substituted.

5. The greatest happiness of the greatest number requires—that, for the function exercised by the drawing of the original draught of such a Code, the competitors admitted be as many as, without reward at the public expense, can be obtained: and so for that of proposing alterations in such draught as shall have been adopted. Plan for obtaining competitors.

6. The greatest happiness of the greatest number requires—that, for the drawing of any such draught, no reward at the public expense be given.

7. The greatest happiness of the greatest number requires—that, every draught so given in be, from beginning to end, if possible, the work of a single hand.

8. The greatest happiness of the greatest number requires—that, such original draught being the work of a single hand, it be known to be so.

9. The greatest happiness of the greatest number requires—that, such original draught, being the work of a single hand, it be known whose the hand is.

10. The greatest happiness of the greatest number requires—that, for the drawing of the original draught, all foreigners be admitted into the competition: and that in so far as applicable,—unless it be in all particulars taken together decidedly inferior, the draught of a foreigner be employed in preference.

11. On the part of an *individual*, proposing himself as draughtsman for the original draught of a Code of laws, willingness or unwillingness to interweave in his draught a *rationale* as above, is the most conclusive preliminary test, and that an indispensable one, of appropriate aptitude in relation to it.

12. On the part of a *ruler*, willingness or unwillingness to see established an all-comprehensive Code, with its *rationale* as above, is among the most conclusive tests of appropriate aptitude, in relation to such his situation.

LETTER I.

Occasion.—Inadequate this Examination.—A pre-Established Standard wanting.—A Standard announced.—This Correspondence must be public—Why.

QUEEN'S SQUARE PLACE, WESTMINSTER,
Sept. 11, 1821.

SIR,—On the 9th last, I received, in due course, through the House of our friend, the letter with which you have been pleased to honour me. On the 22d last, and not before, I received the work which it announced ("Proyecto de Codigo Penal,") and to which it bears reference. So far as regards myself, that letter of yours will assuredly not be lost: nor yet to the world at large, so far as there is any truth in the supposition, that any beneficial effect in any shape will be produced by any thing that comes from my pen: for, among the testimonials which I may ere long have occasion to produce, it will shine with its due lustre.

When, in speaking of the effects producible by the treasures you have put in my hands, I have said thus much, I have, I fear, said little less than all which there is to be said; for, by any particular remarks which I could find occasion to make on the work in question, I see, I must confess, but very little probability of my being able to render any service worth your notice. No such remarks could present any chance of being of use, otherwise than by means of a reference made by them, expressly or tacitly, to some standard of right and wrong, considered as already established. Of no attempt towards the establishment of any such standard do I know, other than that which is contained in my own works: which standard I am about to endeavour at the completion of, and, should life last me a year or two longer, not altogether without hope of success. This standard I term the *Rationale* of the Code: and, in the Code which I am about to begin to draw up, the matter of it will be interwoven throughout with that of the several proposed arrange-

Digitized by Google

ments, which it is employed to explain, justify, and show the grounds of. Here then, apt or unapt, will be a standard, by which, if it be thought worth while, the work in question may in any part be judged of: but, without it, were I to take the proposed Code in hand, with a view to the making remarks on particular parts of it, I should never know where or how either to begin or end.

By the whole tenor of your letter, as well as the declared and only possible object of it, I am not only authorized but compelled to believe, that the more extensive any communication made by me on the subject may be, the more acceptable it will be to you; for, the subject to which you are pleased to invite my attention is no less than the whole of the projected Penal Code, not merely this or that one of the particular arrangements contained in it. Now, then as to this matter, the case stands thus—Exactly what you express your wishes to see me do, it is not in my power to do, with any the least prospect of good effect: in process of time, however, I am not only willing and desirous, but actually endeavouring to do *that* and a great deal *more*. In the following *positions*, which form the *heads* or *titles* of so many *sections*, the sort of work I am alluding to is expressed more correctly as well as concisely than I could in any other way express it.

Positions, designed to accompany the *offer* of an all-comprehensive and rationalized Code. They form the *titles* of so many *sections*, the *matter* of which gives the proofs.

Section 1. In every political state, the greatest happiness of the greatest number requires, that it be provided with an *all-comprehensive* body of law.

2. The greatest happiness of the greatest number requires, that such body of law be throughout accompanied by its *rationale*: i. e. with an indication of the *reasons* on which the several arrangements contained in it are grounded, and by which they are elucidated and justified.

3. The greatest happiness of the greatest number requires, that these reasons be such throughout as shall show the *conduciveness* of those several arrangements to the all-comprehensive and only defensible *end* thus expressed.

4. The greatest happiness of the greatest number requires, that in this *rationale*, the several *reasons* or sets of reasons be *contiguously* attached, to the several arrangements to which they respectively apply.

* 5. The greatest happiness of the greatest number requires, that, of this all-comprehensive body of law, with its rationale, the whole ground-work or first draught be, if possible, the work of a *single* hand.

6. The greatest happiness of the greatest number requires, that, being the work of a single hand, the work in question be *known* to be so.

7. The greatest happiness of the greatest number requires, that the work in question being the work of a single hand, and known to be so, it be known *whose* that hand is.

8. The greatest happiness of the greatest number requires, that, aptitude in other respects not being inferior, the hand, of which the discourse in question is the work, be that of a *foreigner*, rather than that of a native.

9. The greatest happiness of the greatest number requires, that the work be, if possible, performed in the ordinary sense of the word *gratuitously*: in such sort, that no determinate *factitious* reward, in any shape, at the hand of any person, shall be either received or expected for it; but that, under that restriction, the number of rival works be the greatest obtainable.

10. On the part of any proposed *draughtsman*, *willingness*, or unwillingness to interweave in his draught a *rationale*, as above, is the most conclusive *test*, and that an indispensable one, of appropriate aptitude in relation to it.

11. On the part of a *ruler*, *willingness*, or unwillingness to see established an all-comprehensive Code with its *rationale*, as above, is among the most conclusive tests of appropriate aptitude, with reference to such *his* situation.

Of these positions the design is, to form the ground of an *offer* to compose the sort of work therein described; viz. the first draught of an *all-comprehensive and rationalized Code* for whatever nation or nations it may find able and willing to give acceptance to it. This paper is very nearly finished; and, when revised, endeavours will be used to get a copy or copies of it conveyed to Madrid. If in print, as I believe it must be, copies shall be endeavoured to be sent to you, in any number you may be pleased to command, and through any channel or channels you may be pleased to indicate. Copies will likewise be sent to *Portugal*: where, consistently with the disposition already manifested, acceptance can scarcely be refused. As to any other countries to which it may happen to them to be conveyed, the nature of the case renders any express mention of them unnecessary.

On this occasion, an idea I must beg of you to bear in mind is—that, in whatever I write with a view to Spanish law as above, the greatest happiness of the greatest number, as per articles 4 and 13 of the Constitution, is the object I have in view, and employ my labours, such as they are, in the endeavour to give increase to: and that accordingly, subordinate to that end must necessarily be, whatever I can do in compliance with the wishes of this or that individual, how exalted soever his situation and reputation may be.

Sometime ago, I received from Mr Antonio

* See above, p. 490, where in the advertisement of the first edition other positions are declared to be substituted for all after the 4th.—*Ed.*

Digitized by Google

Arguelles the honour of an invitation similar to this of yours. It had, however a determinate and comparatively limited subject-matter, —the use proper to be made of the institution of a Jury. That gentleman had already received copies of all such of my works as I had been able to collect. He had even, without my knowledge, from the spontaneous and self-sacrificing generosity of a friend of mine, received duplicates of a considerable number of them. Not long after my receipt of his letter, a work of mine on a *part* of that subject, viz. *Special Juries*, a work, which, after having been printed, had for ten years been suppressed by the fears of a bookseller, was obtained of that bookseller by another, and published. The Spanish mission took charge of a copy for Mr Arguelles: no letter accompanied it. I have not heard whether it has been received. Taken up out of its proper order, anything that I could find to say on that or any other particular subject, without reference to the *tout-ensemble*, could not be anything like satisfactory to my own mind: it could not contain anything that I should choose to abide by. I have, however, at different times dictated to an amanuensis a few premature and undigested thoughts, which I may perhaps endeavour to forward to him: but whether in manuscript or print I cannot yet determine: at any rate, sooner or later, they are intended to appear *in print*.

On the occasion of an intercourse such as this, public virtue and the greatest happiness of the greatest number, stand exposed to a danger of which, Sir, you are perhaps not aware. The *functionary consulting* has points of his own to compass. For support, he looks out for this or that individual, whose reputation with reference to the subject is more or less established. He applies to him for his opinions—on the whole subject-matter, or on particular parts or points in it. The opinions come. What is the consequence? In so far as they suit his views, he makes use of them: in so far as the name of the author appears needful to give support to the opinions, mention is made of it: in so far as this is not the case, the matter is sunk or appears under another name.

A short supposition will serve to exemplify my conception of the effect. I say—Let the Code pass: but the duration given to it will be, I hope, but temporary. You say—Let the Code pass: even Bentham, after all he has said against it, says so. Supposing this your wish, what should hinder you? who could even blame you? All this you see is but *supposition:* but it will serve to convey to you my conception of the mischief in question, just as well as if it were *fact;* as in part indeed you will find it to be.

So much for the *functionary consulting*. Now as to the individual consulted. Flattered with the notice taken of him, he gives opinions, and to whatever extent suits his purposes. But whether for the sake of the public or no, at any rate for the sake of his own reputation, and the pleasure of seeing exercise given to his power, his wish is, to see effect given to the thoughts he communicates. In respect of these his wishes, he feels himself at the same time in a state of entire dependence on the individual by whom he has been consulted. To render his communications as acceptable as may be to this patron of his, is therefore an object he must not lose sight of. How is that to be done? By rendering his suggestions as favourable as may be to the patron's supposed wishes, that is, to his supposed particular interests and prepossessions. If no opinion contrary to his own is delivered in this view, at any rate he forbears to give any opinion which in his expectation would give offence. To what good end indeed should he? Nothing that the *functionary consulting* finds unpleasant to him, can the individual thus consulted entertain any reasonable expectation of seeing employed by him.

Here then is an individual, native or foreigner no matter, whose thoughts on the subject in question, on the supposition of his competence, the statesman in office is desirous of seeing. Is it for his own sake? His desire will be to see no more of them than what may suit his particular purposes, and these he will keep to himself, or make use of in such proportion and manner as may be best adapted to that purpose. Is it for the sake of the public? His desire will be to see the whole without limitation, to see it displayed to the best advantage, and to see the whole public in possession of it.

Proceeding upon the supposition, that my notions on the subject of Legislation have been fortunate enough to obtain a place in your regard, all, therefore that I can do consistently with the principles above submitted to you, all that I can do (I mean except the trifle which I shall mention presently, and which I cannot do but in the particular way which I shall also mention, and I have accordingly taken measures for it) is to beg your acceptance of a copy of three pamphlets, in which I have at different times used my endeavours, but as yet for the most part with very little success, to submit to the Spanish nation my ideas on several points of cardinal importance.

They are as follows:

1. The tract on the once proposed chamber of the privileged orders in the Cortes. (This stands *first* in one of those three pamphlets.) A translation, for which I was indebted to the pen of Mr Mora, was read, if I may believe the newspapers, in the Cortes: it was even fortunate enough to be followed by unequivocal tokens of approbation on the part of that august assembly, if I may believe the information received through various channels, public and private, unconfirmed as it is by any communication from the assembly itself.

2. Observations on Judge Advocate *Hermo-*

Digitized by Google

sa's panegyric on *Judicial delays, &c.* (It stands *second* in the above-mentioned pamphlet.) A copy was, with a view to publication, sent to Mr Mora, and in process of time, on presumption of its failure, another copy was sent by our friend to a friend of his at Cadiz. I am not certain whether the receipt of the first copy has ever been acknowledged, and I am certain that no acknowledgment of the receipt of the second copy has been received here.

3. The letter to the Portuguese Nation, chiefly turning on some supposed imperfections in the Spanish Constitutional Code. (It stands 3rd and last in the above-mentioned pamphlet.) This found I know not what translator and publisher at Oporto: it would therefore be rather extraordinary, if some copies of the translation have not long before this found their way to Madrid.

4. The pamphlet on the *Liberty of the Press and Public Discussion.** Of this, two copies, the second on the presumption of the failure of the first, were sent to Madrid, addressed also to Mr Mora, and in a letter written by that gentleman, (I believe it was during the time of his being in confinement,) he mentions his having gone about half way in a translation of it.

5. The remaining pamphlet of the three, intituled *Observations on the restrictive and prohibitory commercial system, especially with reference to the Decree of the Spanish Cortes of July* 1820,† was not, like the above-mentioned ones, sent to Spain, or anywhere else, in manuscript. At a time considerably posterior to the transmission of the latest of the above-mentioned tracts, by the spontaneous care of my friend Mr Bowring, whose name stands on the title page, it was committed in the first instance with additions from him, to the English press: and, if I am not much disappointed, a copy must ere now have reached your hands. (So likewise of the two others.) Of this, you will, ere long, I have reason to think, see a Spanish translation in print, if the Spanish press be open to it.

In addition to the above-mentioned little assemblages of my ideas, covering as they do but a small, howsoever important, portion of the field of penal legislation,—you have all along, through that language of which you are so perfect a master, had, in common with that part of the Spanish public which is acquainted with that language, access to those assemblages of my ideas, by which in a certain way the whole of that field is covered. In detail, it is true, not much: but in principle, in a manner more or less particular, indication of not much less than everything that comes within the field of the officially proposed Penal Code, is there given. If the opinion, expressed in terms so flattering to me, continues to be entertained, what I have just indicated will afford an ample stock of matter, by means of which that opinion may manifest itself in practice.

All this while, my wish is—to pay what obedience is in my power, to commands so honourable to me, and at the same time without exposing either of us to any such imputations as those above-described. For this purpose, should I on the present occasion find any use in submitting to you (principally, I must confess, with a view to my above-mentioned offer) a few scattered thoughts,—an effectual, and the only effectual course that the nature of the case admits of, and which I shall accordingly take, is—the giving to our correspondence whatever publicity it is susceptible of. In the liberty I thus venture to take, you will not, I am confident, see any cause of complaint on your part. On no anterior occasion, either in person or in writing, has any intercourse had place between us. In this letter of yours, no desire of secrecy is expressed: no reason for ascribing to you any such desire on my part do I see in it. On any future occasion, should it happen to me to receive the honour of any further communication from you, accompanied with an intimation, that in the whole or any part of it secrecy is desired, your commands to any such effect shall most punctually be observed.

On running over the remarks, which a few irregular dips into the document in question, made in the double view already mentioned, have already suggested, I find the aggregate quantity too bulky by a great deal to be forced into the compass of the present letter. With as much despatch as weak eyes, the labour of which, in the revision of the work of a copyist, is indispensable, will admit,—I propose, however, to transmit the substance of them in a series of future letters, of the respective contents of which some idea may, in how imperfect soever a manner, be conveyed by the following titles.—[Here follow the titles of the succeeding Letters.]

LETTER II.

On the Course taken by the Legislative Committee, to prevent, otherwise than by Punishment eo nomine, *the free Examination of their proposed Penal Code.*

SIR!—I continue. On the subject of the word *free*, as here applied, a word or two in explanation may have its use: misconception and ungrounded imputation of error may be obviated by it.

When, in speaking of action on the field of

* See vol. ii. p. 275. † See vol. iii. p. 85.

Digitized by Google

government, use is made of the word *freedom*, —of *freedom* considered as designative of a possession capable of being infringed or *violated*—it is pretty generally understood, though perhaps not quite so generally as it were to be wished, that it is not merely by physical force, or fear, or sufferance of *evil* in this or that shape, but likewise by hope or receipt of *good*, that the *infringement* or violation of it is capable of being produced. It is in the case of *Election to Office*, that this extended acceptation seems to be most distinct and general: but, in regard to formation and manifestation of opinion, be the subject of consideration what it may, it will be found no less proper and needful. As evil is more easily producible, and capable of being carried to a higher pitch of intensity, than good, fear of evil, as applied to the purpose in question, is upon the whole the more efficient instrument of the two. But, though there are some cases in which the smoother instrument cannot be employed at all, and others in which both may be employed together, other cases again are not wanting, in which, while the rougher is altogether inapplicable, the smoother may be employed, and is continually employed, with perfect facility and sure effect. Examples may perhaps offer themselves, Sir, to your view before this letter closes.

I proceed: In my desire to give the utmost extent in my power, to whatever service my labours may be capable of rendering to my fellow-creatures,—neither the nation, nor the government of which you bear so distinguished a part, could fail to be included. To the endeavours, already directed by me to this particular effect, you are not altogether a stranger; nor yet, I believe, to the difficulties which hitherto these same endeavours have found in their way. Of these difficulties of course not the least effective has been, the aversion with which the foreign productions in question have but too unquestionably been regarded—regarded by that same Committee, on whose work you were pleased to call for my observations: and, to speak plainly, yet I hope not improperly, the consequence is—my fixed apprehension, and that a very serious one, that as far as depends upon the gentlemen in question, unless some change should take place in their sentiments, the Spanish mind will be rendered inaccessible to me.

The liberty of the press is a topic, on which (as above) I have already touched, in one of those recent tracts which I hope are, ere this, in your hands. But that little work was completed and printed before this authoritative work of the Spanish Legislation Committee was in mine. So paramount in my eyes is the importance of this liberty to good government—more so perhaps, supposing the separation possible, than even the form of government itself,—so intimate, at the same time, the connexion, between the liberty thus denominated, and whatever chance any work of mine may otherwise have, of becoming productive, in Spain, of any part of the effect aimed at by it,—that, on *this* occasion, in the course of my endeavours to obtain the access in question, I find myself unavoidably led to make some addition to what I have *there* said; and, what renders me the less scrupulous about troubling you on the subject, is —that thereby, to how small an extent soever, my remarks, as far as they go, will be so many testimonies of my desire and endeavour to pay obedience to the commands, with which, Sir, you have been pleased to honour me.

The subject-matter in question being a proposed Code of Law, sure, like every other human work, to have its imperfections, the consequence is,—that if any remarks on it come to be received as desired, only in so far as, to an extent more or less considerable, indication is given of its imperfections, can any such remarks be productive of any use. Of any such imperfections, simple indication is of some use, and, by an operation of this sort, some service is rendered. To propose a corresponding alteration, if, and in proportion as, the alteration is well adapted to the purpose, is to render an ulterior and still greater service. On the presumption of its contributing to the melioration of the subject-matter, alteration is in the language of English legislation, adopted into the French, termed *amendment*. Amendment is either omission, insertion, or, which is a compound of the two, substitution. If this be true, of this cast therefore, and this only,—of this disapprobative cast, and not of the approbative cast,—are the remarks which a workman, really solicitous for the ultimate goodness of his work, will be desirous of receiving, and use his endeavours to receive.

To the truth of the above position, one exception indeed there is: and to preserve the statement from the imputation of error or oversight, though the exception has no place in the present case, I will mention it. If so it be, that the work in question has been made the subject of delusive remarks, or insufficiently-grounded conclusions of the disapprobative cast, then so it is, that by counter remarks of an approbative tendency,—in a word, by remarks of a *justificative* cast with reference to the work, service may also be rendered.

Such then, and such alone, are the sort of remarks by the communication or receipt of which the greatest happiness of the greatest number can on the present occasion be promoted: receipt, namely, by the two descriptions of persons, to whom in their respective situations it belongs to judge: by the legislators, that, for the benefit of their constituents, they may themselves put the remarks to use: by their constituents, that they may judge how far their representatives have put to use the information furnished to them, and thence how

Digitized by Google

far they have given themselves a title to a renewal of confidence.

Unfortunately, in the eyes of legislators themselves, in the eyes of public trustees in whatever situation, no remarks of any such disapprobative cast is it their interest to see received by their principals: no such remarks would it be altogether agreeable to them to receive themselves, even if (what can scarcely be) they were assured that the remarks so received would not ever find their way to any one of those same principals. As to what regards liberty of discussion, the truth is, (how should it be otherwise?) in every country (so is human nature constituted) what every man desires is, to see all other men in possession of the most perfect liberty of making public all such ideas, by the publication of which the accomplishment of his views and purposes would, in his view of the matter, be promoted; to see no man in possession of any such liberty as that of making public any such ideas, by the publication of which the accomplishment of his views and purposes would, in his view of the matter, be impeded. If it be of human beings that the population of Spain is composed, this account of the matter will be no less applicable to that country than to any other.

In every political state, without exception, it *has been* the practice of rulers to employ the power attached to their situation, in the endeavour to give effect to this desire in both its branches; in every political state but one, this is *still* their practice. You will not, I hope, Sir, insist on my speaking of Spain as being that *one*. In my pamphlet on the liberty of the press and public discussion, I have already pointed it out: the Anglo-American United States.

Correspondent to this desire is, in that same commanding situation, the regard entertained for all such useful truths in general as belong to the field of government. Ever anxious is this regard: but the expedient employed for securing access and acceptance to all such truths, at the hands of other men, is, in case of diversity of opinion, actual or possible, to prevent men from hearing anything about the matter from any other than one side. What that side is may without much difficulty be imagined.

As this one side is of course the side fixed upon by these same tenderly-solicitous and all-commanding functionaries, the partiality thus manifested might be productive of some danger, were it not for that conjunction of infallibility with impeccability, the belief of which it is their equally solicitous and all-comprehensive endeavour to inculcate into the minds of men in general; but of course more particularly into the minds of all those, whose happiness it is to live in subjection to their power.

Twenty years, if I misrecollect not, was the term during which it was at one time the determination of a National Assembly of France, that the Constitutional Code framed by them should continue exempt from all alteration at the hands of any set of men; and in particular of any set of men elected by their Constituents, in the same way as they themselves had been. Not quite so intense perhaps was the persuasion of their being in possession of the same useful pair of attributes, in the breasts of the authors of your already established Constitutional Code. Not greater than eight years was the term appointed for this purpose: this for a finite term; but, at the end of this finite quantity, came another, on the face of which a colour, not altogether unlike that of infinity, is visible. But of this I have spoken in one of those tracts of mine already mentioned.

It cannot, I think, appear questionable to you, Sir, that it is by these same universally prevalent dispositions, that, on the occasion in question, the conduct of the gentlemen of the Committee in question has, with no small degree of exactness, been regulated: regulated, in relation to two kindred objects, to the connexion between which your attention has been above invited, namely, the liberty of the press in general, and the faculty desired by me of submitting to the consideration of the whole body of the representatives of the Spanish nation a series of works, the first of them having the same subject-matter as that of the work laid before them by that same Committee. When brought home to individuals, the idea, which on the present occasion stands associated with it, is not a pleasant one: yet, for clearness, and that the state of the case may be immediately and distinctly seen, I must e'en ascribe to it its proper relative character, and call it a work coming in *competition* with theirs: a work which, with reference to theirs, is a *rival* work.

I shall first speak of the policy in question, as it may be seen applying itself to the more extensive and major object, the liberty of the press at large. I shall then take leave to request your more particular attention, for the bearing which it has upon the particular work in question—the proposed rival work: but even from the first, this minor object will unavoidably be ever and anon peeping out, and offering itself to view.

Good, operating in the way of reward, evil, operating in the way of punishment:—these I think have been already mentioned, as the instruments, and the two only instruments, by which, on an occasion such as that in question, for a purpose such as that in question, the minds in question could in any direct way be operated upon.

Applied to the purpose here in question, the matter of reward not only admits but requires some refinement in the mode of applying it. On the present occasion, the object which gave room for such an application was, the obtaining at the hands of the Cortes at large in the first instance, and ultimately and finally at the

Digitized by Google

hands of their constituents, the people at large, acceptance for the proposed work.

Though not in name, nor in the shape of a determinate sum of money already deposited in a bag, the faculty of making application of the matter of reward, in its principal shapes, money, power, and reputation, could not, in the nature of things, fail to be virtually at the disposal of men in the situation in which the gentlemen in question were acting. Between the whole legislative body, of which they were and are such distinguished members; between this body on the one part, and the immediate and avowed givers of all the above-mentioned political good gifts, namely, the Monarch, &c., on the other, I need scarce remind you how intimate the connexion is, which cannot but have place.

Turning to Article 171, to the King, by his sole authority, I see it belongs (No. 16) to nominate and remove (if *separar* means *to remove*) the Ministers of State and Despatch, namely, the seven ministers, of whom (Art. 222) the Gobierno is composed; (No. 5) to fill up (if *proveer* means to *fill up*) all civil and military employments; (No. 8) to command the army and navy, and to appoint the commanders; (No. 19) to nominate ambassadors, ministers, and consuls; (No. 12) to order the application of the funds, appropriated to each branch of the public administration; (No. 7) to grant honours and distinctions of every class according to law; (No. 13) to pardon delinquents according to law. Now then, Sir, it being so completely in the power of the members of the Cortes to obtain for themselves, and their connexions, an undefined indeed but thence a boundless share in the aggregate mass of all these good things; and this, in the instance of each of them, without so much as a pretence of meritorious service in any individual shape, or of any probable expectation of any such service, must it not, if there be any difference, be matter of increased facility to them, to obtain for other persons, shares, in that same vast mass, by reference made to incontestably existing service? service rendered in such well defined as well as universally conspicuous shapes, as those which stand recorded in so many portions of written discourse, having for their subjects, matters so superior in extent and importance to those which form the ordinary subjects of official service?

The gentlemen in question may perhaps assure you, Sir, (and I should not wonder if they did,) that this notion of their having any such good things at command is my mistake: for that in articles 129, 130, the Constitution has, by express prohibition, taken care to preserve their virtue against temptation in every such shape; and that in article 202 of their own proposed Penal Code, by forfeiture, infamy and expulsion, it has been their care that *that* same article in the Constitutional Code shall not be a dead letter. A prohibition? Excuse me, Sir, speaking with respect, the mistake is not mine, but theirs. Not *prohibition*, but permission is the *effect* (and can I avoid adding *the object?*) of these same self-denying ordinances:—of the severe virtue, thus displayed by the constitution-makers of the first Cortes, and of the rigour with which the gentlemen in question have proposed to enforce it. True it is, that by article 129 no deputy, *while such*, can receive for himself any employment of the number of those which are conferred by the king! Alas! no: if he is unfortunate enough not to see any person whom he can trust to receive it for him, he must e'en wait for it till the unexpired part of the term of his deputyship, namely till from two days to not much less than two years, has elapsed. By the next article (130) if a *pension* or a lot of *factitious dignity* be the object of his wishes, he must even wait one year longer for the fulfilment of them. Moreover, what he is there declared incapable of receiving for himself, (*admitir, obtenir,*) he is by both articles taken together prohibited, and during the same length of time, from *soliciting* for another. *Solicit?* No, to be sure, no such thing ought he ever to do: it would be beneath his dignity. It is for the creatures of the Crown to *solicit*, and at *his* hands, the honour which a member of the legislative body would do to them by his acceptance. So much for the process of solicitation: a process, it must be acknowledged, ill suited to a person so exalted: accordingly the trouble and humiliation of it is saved to him, the benefit remains untouched and pure.

The severity thus displayed is indeed most exemplary: but the act in the proscription of which it expends itself, is an event that can never happen. What? can solicitation be necessary to a man, to produce the supposition that money, power, or factitious dignity, for himself or his connexion, are among the things he would like to have? Such, Sir, is the footing on which the prohibition (meaning always the *permission*) stands in the Constitutional Code. This is the footing on which, in the projected Penal Code, gentlemen found it placed; and on this same footing have they left it.

The faculty, which, under your constitution, the representatives of the people have, of making their bargains with the advisers of the Crown, and thereby, so it be in a number sufficient to compose a majority, employing the whole force of government, in the exercise of depredation, and of oppression in all its other shapes, at the expense of their constituents,—this disastrous faculty comes in here, it must be confessed, but as in a parenthesis. It is, however, that sort of parenthesis, which can scarcely, on any occasion, avoid obtruding itself: for, what is the occasion in which the state of things thus alluded to will not be exercising its irresistible influence? Yes, Sir, it is the necessary result of the existence of any race of irremoveable functionaries whatsoever, with a certain quan-

Digitized by Google

tity of the objects of general desire at their disposal. The legislator who gives to any such race this power, gives the invitation. The people's representative, who is content to act as such, without using any endeavours to remove the power, out of the hands so situated and so filled, gives his acceptance; a tacit indeed, but not the less effectual acceptance. Whether, in your circumstances, anything better could have been done, is another question: meantime, be it ever so bad, that which is done, is not the less done.

On the part of the representatives of the people, during the first days of such a constitution, before things are come to a settlement, and persons are come to an understanding, fear or ambition may produce refractoriness. Little by little, however, if the constitution keeps upon its legs, by mutual interest a sort of agreement will be produced, and a sort of partnership concern, always at the expense of the people, established, and carried on: partnership, carried on, and, in some proportion or other, variable according as individual character varies,—division of the common stock of the objects of general desire continually made. Day by day, stock, and power of enlarging it, will receive increase: day by day, the purse of government will be replenished: day by day, the hands of government will be strengthened: strengthened by that course, which, death in hand, death for everything, gentlemen (I see) have already been exerting themselves with so much energy in marking out: an energy, some samples of which it will lie in my way, Sir, to submit to your consideration. Yes, Sir, a state of contest, and ill-humour, such as seems to have place at present, or a state of agreement such as that I have just been giving intimation of, and gentlemen with their code have thus been making preparation for—such, in every nation on whose shoulders an irremoveable chief, clothed with any such body of power as above, or anything approaching to it, is fastened,—such, Sir, is the only alternative.

Well, Sir, my parenthesis is at an end.

But (says somebody) this reward that you speak of, as being held out to annotators—in what shape is it that you see it held out? Sir, in no shape: in no shape, and thereby in all shapes: in all shapes, in which it may be regarded as being, either immediately or by the intervention of other hands, capable of being administered to such as shall use their endeavours to be thought to merit it. From no such quarter as that in question can be *invitation* given, but *reward*, of itself, places itself at the back of it. Seeing the invitation, you see the reward: seeing the reward, you see it in all the shapes, that imagination, warmed by hope, can give to it.

Now then as to the invitation itself. In the preface to this proposed Code, (see the preface, p. xii.,) you may see the invitation in question given. Invitation! and to what service? To the service that would be rendered by the composition of an entire work on the subject in question? of any work fashioned throughout by a single hand? Of the advantage attendant on this plan of operation you see, Sir, the exposition I have announced. Rival works indeed? On this, or any other occasion, have gentlemen given encouragement in any shape to rival works? Not they indeed. And why not? The answer is almost too obvious to bear mentioning. Suppose a rival work produced—a work to any amount, howsoever great, more eminently conducive than theirs to the end professed to be aimed at,—suppose this done, the work would not have been theirs, the praise would not have been theirs, the rewards, in whatsoever shape looked for, would not have been theirs,—at any rate would not have all of them been theirs. How then could any such idea as that of a rival work have been an endurable one?

Be this as it may, *this* was *not* the service called for. See then what *was* that service. It was the taking in hand the existing work, the only work which, so far as depended upon them, gentlemen would suffer to come into existence; the taking in hand this work, and the sending in remarks upon it. Remarks,—but of what description? Of that description, which alone could, with reference to the greatest happiness of the greatest number of your fellow-countrymen, Sir, be of any use? remarks, in a word, of the disapprobative cast already mentioned? remarks indicative of imperfection, with or without proposed amendments? Oh, no: such was not the sort of remarks wished for. To remarks of this cast no prohibitive bar, it is true, stands opposed. But to what purpose should any such bar have been opposed? what need of it could the nature of the case admit of? In what shape, by any man of common sense, could reward in any shape be expected from any such remarks? Yes, peradventure, from indication given of this or that little spot, or supposed spot, in the sun, just for the sake of showing what it might be in the power of the observer to discover in other luminaries, if it were made worth his while. Yes: a drop or two of gentle censure, but tempered with becoming diffidence and apology, sweetened by an ample infusion of panegyric, and atoned for by intimations of more unreserved obsequiousness on a more favourable opportunity.

Thus it is that, even supposing it were in the terms of it held out to all, a reward offered for such a service would, in the interpretation put upon it, be unavoidably narrowed: narrowed by the consideration of the situation from whence it came. The situation, as above described, considered,—descriptions of persons, more than one, may be named, from whom, how well soever qualified, the probability could not, in the eyes of the gentlemen in question, be great, that without special invitation any such remarks should come. Take, for an example of one of these classes, natives known to

Digitized by Google

be not well affected to the recently introduced order of things: take for another example, foreigners: to them, unless the design had been to prevent remarks from being sent in by them, —to them should special invitations have been addressed. And why not? why not, even to the most hostile? From a hostile hand, out of a hundred remarks, suppose ninety-nine not only in their form hostile, but in their tendency mischievous: so long as there is one that is beneficial, to reject it for no better reason than that of its coming from a hostile quarter, is it consistent with common sense? because this or that man has laboured to hurt you, is that a reason why you should refuse to convey a benefit to those for whom you are in trust?

So much as to undoubted enemies. But from the foreigner, as such, nothing of hostility could have been apprehended. Knowing the prepossessions he would have to encounter, by what inducement, but the hope of rendering, or that of being thought to have rendered, useful service, could he have been led to impose upon himself the labour, necessary to the making trial, whether it would be permitted to him to render it?

Such, if I do not mistake the matter, being the course which a preferable regard for the greatest happiness of the greatest number of Spanish citizens, would, on the occasion in question, have caused to be taken in relation to foreigners, be pleased now, Sir, to observe the course actually taken.

Advertisements were proposed to be inserted, and doubtless were inserted, in the National Gazette:—advertisements inviting remarks from all hands, inviting them with the most eloquent energy imaginable.

Tercero says (page xx.) Que asimismo, por *anuncio en la gaceta*, se invite, *á todos los literatos y personas instruidas que de este modo quieran concurrir á una empresa tan recomendable y de tanto interes para toda la nacion, espandose que las Cortes apreciarán sobre manera el que lo ejecuten, y dén este testimonio de* PATRIOTISMO *y amor á la causa pública.*

At that very time, one hand was not unknown—one hand, from which, with well-grounded assurance, gentlemen might have expected—if not exactly the sort, much more than the sort, of service thus called for. The interval, and more than the interval, allowed for these communications, namely, between some day *previous* to the 21st of April, 1821, and the 1st of July, 1821, had passed away; and by that hand no intimation to any such effect had been received. Whatever information, now in the middle of September, the individual in question is possessed of, it is to yourself, Sir, that, viz. on the 22d of August, and not before, he became indebted for it. Was it that his name, or his works, were unknown to them? No, assuredly. For in the hearing of the gentlemen in question, one of those works had been read: with others he is not without reason for believing, that of old some of them had been familiar. Others again, and in no small number, had, to their knowledge, been presented to the illustrious body, of which they are such distinguished members; and, if he has not been egregiously misinformed, presented, and, with no very common tokens of approbation, accepted. Is it that the way to the scene of his labours,—is it that the way to his hermitage—was unknowable or unknown to them? Sir, (not to speak of private correspondence through the Spanish mission at the Court of London,) the Finance Minister of the day in his public capacity, the Minister of the Interior of the day in his private capacity, the whole Gobierno of the day, the whole septemvirate of Ministers, had found the way to it.

But no: not merely on that *one* foreigner,—no, but on all foreigners without exception, was the exclusion meant to be put: witness the word *patriotismo;* for, the Spanish being the nation in question, whatsoever were the service rendered by any foreign hand, whatsoever were the generous affection manifested by any such service, it is not any such word as patriotism that could be the name for it.

On this word *patriotismo* a not uninstructive comment is supplied, by the affront put, through the medium of the French papers, on one of the members of the French legislative assembly, and on the present which, doubtless in the presumption of a due regard on the part of the constituted authorities of Spain for the interest of their principles—he had ventured to make to the Cortes: little, of course, could that distinguished representative of the French people think, that for the good he was seeking to do to the Spanish nation, evil in that or any other shape would be the requital. This, of course, has for its ground the supposition of a participation, on the part of the gentlemen in question, in the affront so given: what truth there may be in it can scarcely be unknown to a person in your position, Sir, but is altogether unknown to me: only from what is known to me, namely that which is known to everybody, can any judgment of mine be formed. In that case, what there was of purposed affront out of the question, if any real injury was done, to what party or parties was it done? to the individual, by whom the information, whatever it was, was thus presented? No, but to the people, who see in the gentlemen in question their appointed agents and trustees. Is it not to them, Sir, that the injury, if any, was done? —an injury, the magnitude of which will be in the direct ratio of the relative usefulness of the information thus rejected.

Oh! but, Spanish wisdom! such is the transcendency of Spanish wisdom! by it all the assistance that could be had from the whole world besides, is rendered superfluous and useless! Thus it is that self-regard and self-sufficiency think to hide themselves under a cloak of patriotism. To every man's vanity a bribe is thus offered in the shape of a compliment;

Digitized by Google

and such a compliment! And for this bribe it is, that he is called upon to give the reins to particular and sinister interest in the breast of these his agents, and to make sacrifice of whatever benefit, to an amount altogether boundless, might have been the result of the assistance it accepted: assistance given to inexperience by experience on a field of action, at once the most important and the most difficult that can be named.

True it is that, in a certain way, in speaking of what they have already done, mention is made by them, but in the most general terms imaginable, of their having taken cognizance of foreign Codes,—an alleged token of zeal, industry, magnanimity, and prudence, for which, by the very mention made of it, praise is claimed. As this was no more than what every eye would look to them for as a duty, no praise was to be had for the avoidance of it: on the contrary, it was only from the alleged performance of the task that anything in the way of praise could be expected.

But information in the field of legislation being the thing to be looked for, for what reason look for it in the works of men clothed in power,—in works, too, in and by which that very power has been exercised—for what reason look for it to such works, not only in preference to, but even to the exclusion of, the works of men not so distinguished? Supposing the greatest happiness of the greatest number of their constituents their end in view, there were two reasons, why to unofficial even the preference should have been given over all such official productions. In the very nature of the situation from which they have come, what is made manifest by all such official productions, is—that they were produced under the irresistible influence of a *sinister* interest: an interest separate from, and throughout the whole field of legislation, in numerous and important points, diametrically opposite to, that of the greatest number: in a word, a particular interest, to which, throughout the whole extent of such opposition, the universal interest would of course be sacrificed. In regard to the official productions, this was matter of certainty: it could not be otherwise: in regard to the unofficial productions, though, by the unavoidable exposure to the temptations held out by the ambition of having a place among the ruling few, the like result is in each man's case rendered but too probable, yet there was no such certainty as in the other case.

So much as to what depends upon *moral*, now as to what depends upon *intellectual*, aptitude.

From the situation of the unofficial publicist, something in the way of a *rationale* might be expected: expected, and even with full assurance. Why? Because on this would be his sole dependance for whatever influence he could hope to exercise. To the work of the official publicist in question,—if the writer whose writing, whatsoever might be the purport of it, was to have the force of law,—no such needless encumbrance had ever been seen attached. From that situation, prisons and gibbets, such as the gentlemen in question have prepared such abundant work for, they saw everywhere set up in the place of *reasons;* and by those irresistible instruments, the proverbially feeble one, as they saw but too plainly, has in all such works been, in the judgment of the workmen at least, rendered needless and superfluous.

Thus it is, that, in a kindred and congenial sinister interest, the sinister interest to the operation of which the gentlemen in question, in their situation, stood so inevitably exposed, found a natural ally: while the indiscriminating prejudice, which power, by whomsoever possessed, and how ill so ever exercised, has everywhere found means to establish in favour of itself and its own operations, gave its sanction to the expectation that, in works of that description, fit models and objects of imitation for their own work would be viewed: works of which, accordingly, in that character, I cannot but hope to find, Sir, that in your opinion but too much use has been made.

The truth is—who can deny it?—one exception alone excepted—as between the rulers of every nation and the rulers of every other, there exists a community of sinister interest, and correspondent sympathy. In particular, in the union of impeccability with infallibility, may be seen a pair of attributes, the belief in which is to all of them alike convenient: and in the assumption of which they accordingly fail not, any of them, to join, with equally plenary and unqualified self-satisfaction and assurance. True it is, that to be inferior in the conjunct scales of moral and intellectual virtue to those whose place is inferior to their own in the conjunct scales of power and opulence, is a condition entailed upon them by the unalterable nature of things: for in the direct and not in the inverse ratio of the need he has of voluntary good offices at the hands of his fellow-creatures, will be the strength of a man's solicitude and endeavours to stand high in their esteem, and to deserve well at their hands. But, the certificate to the contrary, which, with an unanimity that only within these few years has begun to experience any disturbance—this most convenient and comfortable certificate, which, under the same sinister influence, has been signed by almost all writers, from whose works men have derived that instruction by which mind is formed,—has as yet kept minds for the most part shut against a truth, which, when once received, will be found pregnant with all comprehensive practice.

Upon the sort of service in question, at the hands of foreigners, friendly or unfriendly, with what pretension to consistency, could an exclusion, in any shape, direct or thus indirect, be thus put? I mean always on any such supposition as that the greatest happiness of the

Digitized by Google

greatest number of their constituents was the end in view. For, that they derived whatever service was in their eyes capable of being derived from foreign *Codes*, is what gentlemen themselves declare, (p. xii.,) and even give themselves credit for. By any such accidental circumstance as that of its having received the sanction of a government in a foreign country, is it in the nature of the case, that the utility of any arrangement with reference to Spain shall have received increase? And in that case, let the draughtsman have been who he may, was he anything more than one out of an indefinite number of his countrymen, from each of whom equally well-grounded expectation of the like service might with equal reason, not to speak of the superior reason above-mentioned, have been entertained? With perfect consistency, however, it must be acknowledged, might that be done which was done, on the supposition that it was their own particular interest, in preference to, and to the exclusion of that all-comprehensive interest that gentlemen had in view. For in the case of the Codes, the service, said in general terms to be profited by, being already rendered, was a service, the rendering of which it was not in their power to prevent coming into existence: and the individual by whom it had been rendered not being known, could not rob them of any part of the looked-for rewards in any shape: whereas in the case of any foreigner by whom an invitation given by them had been accepted, the individual by whom the service had been rendered would have possessed, and naturally speaking have exercised, the faculty of making himself known, and thereby have come in for his due share, whatever it might have been, of the reward: at any rate of the praise.

As to foreignership *at large*—foreignership in unofficial situations—this condition, which, by the gentlemen in question, has been taken for a cause of effective exclusion, is the very one which, in the paper above referred to, you may have observed me employing in the character of a ground for preference. The reason is—the comparative inaccessibility of that situation to all corruptive influence. After what has been said, I would rather hear you answer, than say myself, whether it was not by the consideration of this very inaccessibility among other circumstances, that the exclusion was determined.

But not only is the door thus shut by them against all information from foreigners and from opponent fellow-citizens, but with still more effective and inexorable rigour is it shut against the greater number of those individuals, how well soever affected, whose happiness it cannot but have been gentlemen's wish should be understood to have been their end in view. You see already, Sir, that it is of ultramarians that I speak: of such of those whose distance from the seat of legislation precluded them from the possibility of causing any information on the subject to be delivered in from them within the appointed time: that is to say, of all of them in the lump: those only excepted, to whom, in a number scarcely equal to that of Frenchmen, it may have happened during the interval to have had their residence within the Spanish part of the Peninsula. No political bar, it is true, here: nothing more than a physical bar. But the physical bar is as insuperable as those political bars which your legislature (pardon me, Sir) has been in so much haste to set up—I mean those which belong to the prohibitive and restrictive anti-commercial system—are feeble and inefficacious. Your thus excluded fellow-citizens, such of them as still remain to you,—what think you will they say to this? to a proceeding, in which, so far as regards them, even the common exterior forms have not been observed? If Spaniards are lovers of forms—and they have not unsparingly been spoken of as being rather too much so for their own interest—if Spaniards are lovers of forms, how will the matter be taken by these your distant kinsmen? Are they Spaniards? are they non-Spaniards? If Spaniards, what treatment is this that has been given to them? If non-Spaniards, where is your right to legislate over them? where is so much as your pretence?

When speaking of information from foreign hands, it is of themselves (p. xii.) that, of course, they speak, as the persons of all others to adopt whatsoever shall be "most analogous to the political state of the nation." Ah, Sir! should you ever see the remarks I have ventured to make, and the arrangements I have ventured to propose, with an equal view to the greatest happiness of Peninsular and Ultramarian Spaniards,* you will see perhaps "how much more analogous to the political state" of the greatest number, is the system proposed by one foreigner at least, than the one proposed by these so highly distinguished and selected Spanish citizens. Yes, Sir; with no eye other than an equal eye, could a person not exposed either to sinister influence or to interest-begotten prejudice, have considered the interests and claims of the two so unhappily conflicting parties: and in the unendurableness of all useful and impartial information on that subject, may not the aversion to receive any such service from any such hand, have had one at least of its causes?

Ah, Sir! it is not only from what it may be in men's power to do, but likewise from what it may be in their inclination to do, that, to have any chance of proving correct, our inferences must be deduced. And whatever be the meaning of the phrase "*analogo al estado politico de la nacion*—" whatsoever be the meaning of this so conveniently nebulous insinuation—think, Sir, if in all its parts your system of legislation were equally "*analogous to the poli-*

* See the Constitutional Code, in this collection. —*Ed.*

Digitized by Google

tical state" of those Spaniards, who in greater number are inhabitants of Ultramarian Spain, as of those who in lesser numbers are inhabitants of Peninsular Spain, where would be the advantage that could possibly be derived by the lesser number from the dominion claimed by them over the greater? But this is among the parts of the field of thought and action, on which, that their view of them may be the clearer, men in your country, as in every other, are so unhappily confirmed in the habit of shutting their eyes: at any rate of striving, might and main, to keep shut the eyes of their fellow-citizens. O yes! if Ultramarian could as easily be shut as Peninsular eyes! then would all be peace and amity.

Such being the descriptions of persons against whom, with their remarks, the door is shut, a word as to those to whom it is left open. These are natives of the Peninsular Spain at large, and one particular class—the class of *lawyers*. (See p. xix.) To the invitation given to natives at large, apply those observations which need not be repeated.

As to lawyers, being already comprehended in that general description, to them no special invitation, no *second* invitation, could naturally have been given, but for some special purpose. What can have been that purpose?

If there be a class of men whose particular interest is in a state of diametrical and immoveable opposition to the best interests and greatest happiness of the greatest number, it is the class of lawyers: it is their interest that, in regard to every possession, for the security of which men look to law, uncertainty should be at the highest degree of the scale at which it can be, consistently with the sufficiency of the fund, from which the professional profit must be drawn: it is their interest that the expense, with its sources and accompaniments, the delays and vexations attached to the purchase of a man's claim for justice, be as abundant as possible, for the sake of the profit extractible out of the expense.

In this profession, the state of the mind—is it not, to a first view, that of a perfect indifference as between *right* and wrong, for the defence of either of which, as it may happen, a man is hired? to a nearer view, a predilection in favour of *wrong*, as being the most dependent and most profitable customer? The assassin so called, is the malefactor, who, for the hire he receives, risks his life; the lawyer is the malefactor, who, for the hire he receives, risks nothing: risks nothing; but, on the contrary, like the conqueror, obtains at the hands of the foolish and corrupted multitude applause and admiration, in the direct ratio of the quantity of human misery he has produced.

If there be a profession, by which a man is prepared for the perpetration of mischief, in a profitable, so it be an unpunishable shape, is it not the profession of the law? If there be a profession by which, by the power of continual practice and continually received remuneration, all regard for truth is completely eradicated—a profession, by which insincerity is by the same means, with correspondent effect, injected and fixed, is it not the profession of the law? If there be a profession, by which, by the same perpetually recurring operation, a man is more effectually prepared than by any other for the letting his faculties out to any person, for any purpose for which reward in apposite shape and adequate quantity is to be got—if there be a profession, by which, for even the most inconsiderable reward, a man is prepared, so it be without personal hazard to himself, at the instance of any one who is able and willing to give him that reward, to render to the greatest amount a sacrifice, of the greatest happiness of the greatest number,—is it not the profession of the law?

These considerations—all which stand on the surface of the case—these considerations, which so stare every man in the face, can they have been a secret to the gentlemen of whom I speak? Was it possible for them to doubt of the object and tendency of any remark, that, consistently with the nature of man, could come from such a source? Was it possible for them to be uninformed of the alliance between the particular and sinister interest of this class of men, and whatever particular and sinister interest their own situation exposed them to the action of?

I shall presently, Sir, have to request your notice, for a sort of auction which, in this preface of theirs, gentlemen have set up:—an auction, at which the lots on sale are composed of recommendations, to be given by them to the favour of the givers of good gifts, and the biddings are to be in expressions of praise bestowed upon this their own work; the first bidding, above which all others are to rise in a sort of indefinite height, having, as you will see, been made by themselves. Supposing the auction to find bidders, can there have been any doubt in gentlemen's minds, of the spirit with which biddings would come from the class of purchasers thus exclusively distinguished?

Not that the door ought to have been shut against lawyers, any more than against any less determined enemies of good government and good laws; only that it should not have been thrown open to them so much wider than to friends; in a word, than to all the world besides.

On an occasion such as this, in the force of public opinion, any man, even though a lawyer, would, if it were in his own single person that he came forward with his remarks, find some restraint: some restraint on the effusion of particular and sinister interest in one situation seeking to be admitted into partnership with particular and sinister interest in a situation more elevated and effective. Even of this restraint, on looking at the terms of the special invitation thus addressed to lawyers, it seems

Digitized by Google

as if the removal were among their objects. Copies of the proposed Code are ordered by them to be *sent*—Sent whither? To the three sorts of bodies corporate thus denominated; namely, "Universities, Tribunals, and Colleges of Advocates." By whom, in such a case, might it most naturally have been expected, that the returns, if any, made to all this magnanimity, would be made? By whom? unless it be by the several bodies, to whom before all other persons, if not to the exclusion of all other persons, it was to be, and I cannot but conclude has been, made known. But by any body in the situation of this Committee,—from any of the bodies so addressed by it, what, consistently with the universal principles of human nature, as evidenced by universal practice, could be expected? what, unless in the accidental case of discord produced by particular interests, could be expected, but one uninterrupted chorus of ecstatic praise?

Will it be said, that by the words employed in the designation of these bodies, nothing more was meant than to make known the channels employed for conveying the great work to the cognizance of individuals, and that it was from the members in their individual capacity, and not from the bodies, (that is to say, not from some of the leading members, released by their union from all responsibility as towards public opinion,) that the remarks were looked for? But had this been the meaning, where could have been the difficulty of finding expression for it? Whether this could have been their meaning, you, Sir, from your situation, perhaps know; by us, at our distance, no conjecture can be made, but from such details respecting lengths of time, compared with lengths of work and space, as gentlemen themselves have been pleased to supply us with.

I say from lengths of time, &c. The twenty-first day of April is the day of the date attached to their preliminary discourse: and thereupon come the authenticating signatures, latest day allowed for the sending in of remarks, the first of July then ensuing: interval, two months and nine days. The document, to which on that day these signatures were affixed—in what state on that same day was it? in the manuscript or in the printed state? If in the manuscript state, then to find the time left for distribution, receipt, and composition and transmission of remarks, will be to be deducted the time employed in the printing of the work: of a work containing in the preliminary discourse 20, in the body of the work 248, 4to pages. In either case, it is from "the secretary of this same committee," or "*through* the *medium* of the *Gobierno*," the septemvirate of Ministers, that the packets had to go: to go to the utmost bounds of your extensive country, not very advantageously distinguished for the goodness of its roads, or for the facility of its communications of any kind. Now suppose one of these packets arrived at the residence of the official person to whom it has been addressed: thereupon, whatever further distribution it can have has to wait his leisure, and the determination of the individuals, within whose reach the several copies shall be placed, will depend more or less upon his choice: upon his choice, either singly or in conjunction with the individuals, whoever they may be, in whom he sees his necessarily consultable colleagues.

Now, Sir, within any such space of time, taking it at its maximum, to this display of condescending magnanimity, what was the sort of return—the only sort of return—that could have been looked for? Indication given of particular imperfections, with or without indication of means of remedy, grounded on the separate consideration of the several articles? could any such instructive indication have been of the number of the communications that were expected, or of the communications that could have been made? No, surely. But if not, what others? The answer is sufficiently obvious. In the form of addresses, laudatory orations, conceived in the most general terms, and vieing with one another in intensity of admiration as above: of time for these, whensoever inclination had place—for these in any number, there could be no want: for no remarks of the other cast, in a condition fit to make their appearance—for no remarks of any such unwelcome cast, even supposing inclination ever so alert, could there have been anything approaching to a sufficiency of time.

Thus it is that, independently of all those other securities, under the ingenuity thus displayed, the mere circumstance of time served to secure to whatever communications could be received, that laudatory character which, if any, it had been determined they should possess.

Praise was the one thing needful: praise was a thing gentlemen were determined to have. This I have been forced to say over and over again. But what I have not yet said, or, if I have, not yet shown, is—that for fear of accidents, some they were determined to have that should be of their own making. I have spoken of the auction, of the lots to be sold at it, and of the prices in expectation of which the lots were put up to sale: I have spoken of their being themselves the first bidders, and of their bidding as being the price at which each lot was put up. Be pleased now, Sir, to look at the terms of it.

"It will be worthy of being reckoned (says p. xix.) among the most celebrated Codes of cultivated Europe: it will merit the esteem of wise nations; it will merit the gratitude of the Spanish nation: it will merit the veneration of the present age; it will perpetuate the memory of the legislature of 1821 in all future generations." Now, what, Sir, is the work thus spoken of? What is it but that which has been the fruit of the united wisdom of the gentlemen themselves, who are pleased thus to speak of it?

True it is, that before it has been raised to

Digitized by Google

this pitch in the scale of excellence, not to speak of the remarks sent in, in no time, as above, it will have had the benefit of such remarks and consequent amendments as shall have been made by the legislature at large: but the remarks and amendments made on it by the legislature, what will they have had for their groundwork? This same work of the gentlemen in question: this, and nothing else. Now what at the utmost can be the amount of any alterations, which, after anything like an adequate discussion, can by possibility be made within the quantity of employable time, so anxiously and effectually narrowed as it has been by the Constitutional Code? Time sufficient for adopting each several article by acclamation:—yes; even on the supposition that before the acclamation each article is not only to be read, but read well: for this operation the quantity of time left applicable to the business may be sufficient. But suppose anything that could be called a *discussion* to have place, long before the first title could have received any tolerably well-considered amendments, the whole quantity of time applicable to the business will have been consumed.

All this while, self-abasement there is—and that in no small quantity as well as intensity: magnification of the burthen, and of their inability to bear up under it: great reliance professed in the assistance looked for from without; looked for from the zeal, not only of colleagues and fellow-citizens, but of foreigners. Speaking of the heavy charge *(la pesada carga)* which they felt pressing on their shoulders, and of the debility of those same shoulders, *("que gravitaba sobre sus debiles hombros,")* they speak on the other hand of the alleviation which they promise themselves from the assistance of well-informed men of divers descriptions, concluding with *estrangeros*. But all this is in p. xi.: and page xix. is the page in which, this self-confidence having in the interval risen to the degree just mentioned, the desire of receiving assistance from strangers gives way to the anxiety for the exclusion of it.

The self-diffidence has the air of an introduction, employed to prepare the way for the self-confidence. The self-diffidence looks as if drawn from some treatise of rhetoric; the self-confidence as if drawn from some other source.

Such as you have been seeing, Sir, is gentlemen's persuasion of their own appropriate aptitude; thus transcendant and consummate is it in their own eyes! But, not to speak of their colleagues in the legislature, their constituents,—if eyes they have, what will it be in the eyes of their constituents? For the support of any such claim, not a particle of ground, as far as I can find, have they, any of them, in any shape, at any time, made anywhere. Right of succession? can *that* be their ground? Impossible: for you will see how energetically they have negatived it. If *that* were their ground,—at the very lowest point, if they themselves are to be believed, would their station be in the scale of aptitude. If to their judgment, if to their pointedly declared judgment, any confidence is due, down to the moment at which this function devolved upon them, never can there have been anything more consummate than the inaptitude, by which the productions of all who have gone before them in the same track have been characterized. Their constituents—what will they say to them? The assent of their constituents—will *that* be given to this judgment of condemnation, to a condemnation so severe, so universal, and at the same time so pregnant with practical inference? Well, suppose the assent given. The gentlemen themselves—what will they be the better for it? From this rule, sweeping as it is, the confidence with which they look for an exception in their own favour is indeed entire. But this confidence—on what ground does it stand? None, as I have already said;—none whatever have they made for it. Of their aptitude, of the existence of which in their imagination everybody stands persuaded—persuaded, as if it had been made manifest by the strongest evidence, what evidence have they to show? Have they so much as their own evidence? Not they indeed: not so much as their own evidence: unless an event altogether supernatural and miraculous be to be believed: believed upon the ground of this same evidence. True it is, that while page xix. was writing, their persuasion of their own aptitude was such as is there described. But, at the time when page xii. was writing,—what was it? This too you have seen: so that, if they are to be believed, the change from a state of self-lamenting debility to a state of exulting vigour, took place within the interval occupied by the composition of these seven pages.

It is from Spaniards, be pleased to observe,—from these same Spaniards, that, with a declared exception in favour of themselves, and one other which the rules of politeness could not fail to add in favour of the company present, and a presumable one in favour of the author of the Constitutional Code, this assertion comes, of a universal state of inaptitude, with reference to the work of legislation on the part of all Spaniards.

So much for these Spaniards. Now, as to this same point, what would naturally be the judgment of an impartial foreigner? As, down to this moment, according to their own conviction, men born and bred under Spanish government have been in so eminent a degree unskilful, the probability is, (he would say,) that even now, at this moment, they are not so consummately skilful, that assistance from abroad should be peremptorily rejected: rejected, under any such notion as that of its not affording so much as a chance of being of any use.

On their own assertion, as you have seen, rests the notion of their own aptitude: upon their own assertion, and that a self-contra-

Digitized by Google

dicted one: for to no other proof have they so much as made reference. Of the inaptitude of their predecessors, their notion stands on somewhat better ground. In proof of this, they have given statements and references, of which I cannot resist the temptation, Sir, of presenting you with some specimens. Scarcely can language furnish expressions more energetically declarative of consummate worthlessness. The essence of the national legislative wisdom they found concentrated, they inform you, in a compilation—the work of the then impeccable and infallible, but now extinct Council of Castile: a mass composed (say they, p. xi.) of collections made with a view to the amendment of the law. Disgust is the sensation declared to have been produced by its contents: a parcel of rough drafts, loose remarks, incoherent and undigested pages: dissertations half religious, half political: extracts from various penal laws, with notes exhibiting coincidences and repugnances. Apparent destination of the whole, furnishing patchwork for insertion into a new edition of the statutes at large. (*Recopilacion.*) Plan, the old plan: "salutary innovation, none: convenient reform, none: sole object, preserving and giving support to the antiquated and vitious system: basis, the same: punishments, the same: with a vast heap of laws and titles unsuited to the present day."

Under the notion of reform, the best thing that had been thus proposed to be done was—the giving a new edition of the old system in the old spirit, and upon the old plan: of which old system they had already, in p. vi., spoken in terms in which every vitious quality a system of law is susceptible of, is spoken of as exemplified by it in the highest degree conceivable: incomprehensibility in the style, absurdity and iniquity in the regulations, atrocity in the punishments employed for giving effect to them; and so forth.

At the end of what is said of the above plan for the amendment of those same laws, (p. xii.)—that the spirit of them may be anticipated from the nature of the subjects, examples of those subjects are brought to view.

"Holy Trinity—Catholic faith—Jews, and their expulsion from the kingdom—Moors and Moriscos—heretics and persons excommunicated—diviners, sorcerers, and soothsayers—oaths and perjuries—sacrilege—money-lending and usury—eccentricities of the sexual appetites in respect of species and sex: these and others which" (they conclude with saying) "ought not to have any place or direct insertion in any good criminal Code."

Thereupon, Sir, comes a natural question:—what answer shall I give to it? The depravity, so unreservedly ascribed to the whole body of the law—to the whole of the law then and even still in existence—by what causes was it produced? Was it not by sinister interest? by interest-begotten prejudice? by authority-begotten prejudice? by inbred intellectual weakness, the fruit of bad education, in a country into which no good book, unless by stealth, could ever penetrate? of a mind-debilitating and mind-perverting system of education, and those habits of thinking and acting, that could not but have kept flowing from it throughout life? All these causes of inaptitude—is it in the nature of man, that, at any point of time whatever, the influence should all on the sudden cease? The explosion, by which some of the instruments of tyranny were driven from about the throne, and some of its victims cast into their places—this or any other political convulsion, is it in the nature of it to change with equal rapidity the whole texture of men's minds?

Gentlemen speak of new lights, (p. vii. ix. xix.:) even the King's Proclamation to the Ultramarians (April 27, 1820) speaks of new lights. It was by these new lights (or if not, by what else?) that this self-confidence, of which, Sir, you have been seeing such abundant testimony, was inspired. But, these new lights—from what sources were they derived? From Spanish sources? No: even by gentlemen themselves this supposition, you have seen, is energetically negatived. From what sources then? From what but foreign ones? Yet, that from these sources—from the only sources, from which the lights which form their sole dependance have ever come—any fresh lights should come, this is what they cannot endure the thoughts of.

Instead of eulogy, suppose melioration the thing desired,—what, in advertising for remarks, would have been the course taken? Would it have been any such close course? No, Sir: it would have been a course as open as the nature of the case could possibly have admitted. "Send in your remarks," (it would have been said,) "send in your remarks, whoever you are, they shall be printed: not only to our eyes shall they be presented, but to the eyes of all our constituents; of all our and your fellow-citizens; in a word, of all mankind; of all those beings, on whose condition, in respect of happiness, your remarks will exercise their influence: exercise it? Yes:—in proportion to the value possessed by them, in the first place in the eyes of the selected and official judges, in the next place in the eyes of all men sitting as judges in the tribunal of public opinion. Send in, each of you his work, without name or other token, by which, antecedently to the time for its being put to use, the judgment passed upon it might be perverted: perverted by good or ill-will as towards the person of the workman. Send it in without any such public notification: and be assured, that if, for drawing aside the impartiality-securing veil, any private intimation be conveyed,—the avenging eye of the public will be on him by whom the corruptive information is conveyed, and on him, whoever he be, on whom it is productive of the effect it aims at."

Digitized by Google

P. S. I should be curious, Sir, to know, if the thing were possible, how many and what the communications are, that, in pursuance of the invitation to send in remarks on their draught, have been received by the legislative committee: received, antecedently to the appointed day, July the first, or at any time since: what received, and from what public bodies, and what individuals respectively sent in, and from what places: and, of those received, what have been printed and published for the information of constituents, beginning with the people of Madrid. It might to any one be matter of curiosity, to say no more, to see what sort of agreement there has been, between the facts and the inductions above hazarded in relation to them: hazarded by a man, whose eyes or ears no positive information whatever had ever reached.

LETTER III.

On the course taken for preventing, by means of Punishment, eo nomine, *all effectual Indication of Imperfections in the existing political System, the proposed Penal Code included.*

SIR!—The efficient power of the matter of reward is great, but its applicability is limited: it is limited by the limits which the nature of things has set to the quantity of the matter of good to which this destination can be given, and by the number of the persons to whom it is possible to flatter themselves with the hope of a share in it. In the present instance, their number falls short—very short—of the whole number, of those on whose part, for the attainment of the end, acquiescence at least has been regarded as necessary. To produce acquiescence at the hands of the vast majority, no instrument of less force and applicability than punishment was looked upon as sufficient.

Follow a few samples of the use made of it.

Of the acts marked out for punishment, one is—*that* which consists in the endeavour to make an *alteration* of any kind in the political constitution of the Spanish Monarchy. For this offence, the punishment appointed is death. The article, by which the anxiety to secure obsequiousness is thus expressed, is the very first in the whole Code: and, as in this, as in any other work, the commencement is that part to which the attention of the workman will naturally have been most closely applied, it may, at least without intentional injustice, be taken for a sort of sample of the whole. Whatsoever may have been the design,—here already, so far as regards effect and tendency, two intimately connected objects may be stated as being in a certain way provided for: namely, the securing *order* in the *legitimate* style, and the keeping at a distance two troublesome sets of men—impartial critics, and impertinent and presumptuous competitors.

Indication of alleged imperfections, indication of arrangements calculated to effect the removal of those same imperfections, indications of other Codes in and by which the removal or exclusion of those same imperfections has been effected—of indications of any one of these three sorts separately, at any rate of any two or of all three conjunctly, if the design be not to produce *alteration* in the system of which they are the subject, I know not what design they can have.

In the midst of all the care thus taken of the liberty of the press, an apprehension appears to have presented itself: an apprehension, of a certain overweening scrupulosity, to say no worse, on the part of this or that judge, the effect of which might be—to exempt the "*traitor*" (for such is the name given to the offender) from the lot so justly merited. For the tranquillizing, as it should seem, any such apprehension, (for in whatever I say in regard to any of the designs that seem to be indicated in and by this Code, I speak with unfeigned diffidence,) for greater security at any rate,—by article 213, provision is made of a more lenient visitation: six years' seclusion in a fortress. Nothing more than this, except that the situation of the fortress may be, and is to be, in one of the islands: the quantum of the suffering being accordingly susceptible of such undescribed and undescribable additions, as the case may be found to require, without any of those unsuitable alleviations, which the eye of so troublesome a public as the public of Madrid, might be disposed to look out for, if access were possible to it.

True it is that, to the sort of offence which seems to have been in view in both cases, the wording given in this latter case is (by article 213) not exactly the same as that given in the former case (by article 191.) In that former case, a characteristic word is *alterar*, to alter: in this latter case, *guardarse*, to be kept: but that, by this change in the language, any change is meant to be made in the idea conveyed, is more than I can see.

Not that, in this case any more than in the other, I can take upon me to say, but that, in the view taken of the matter by this or that person, in the situation of legislator, or in the situation of judge, a milder might eventually, in preference to the more efficient interpretation, be the proper one. But here comes in the misfortune, if not the policy: two periods are here in question: the period anterior, and the period posterior, to the sanctionment of the law. To the anterior period lest legislator, or constituents should be more or less alarmed, the milder interpretation is, without

Digitized by Google

doubt or difficulty, the best suited. Comes the posterior period, and then, according as the decision falls to the lot of this or that judge, and according as the side, in support of which the obnoxious act has been done, is the wrong side or the right side, the interpretation put upon the words is the milder of the two, or the more efficient.

When confronted with some of the other articles, by which tongues and pens are endeavoured to be tied, this article 213, with the word *guardarse* in it, throws me into no small perplexity. By this article, every Spaniard, who, by word of mouth or in writing, shall endeavour to produce any such persuasion (*tratore de persuadir*) as that, in Spain or in any of her provinces, the political Constitution of the monarchy, in the whole or in part, ought not to be kept (*guardarse,*) is to be *chastised* (*castigado*) as a *subversor* of that same Constitution in the first degree, (whatever be meant by *the first degree,* for the explanation of which no reference do I see,) and suffer imprisonment for six years: which, if it be in the Peninsula that he has been condemned, is to be in some fortress in one of the adjacent islands, as above: not to speak of *et cæteras.* But, by article 191 as above, if a man do but *conspire* to *subvert* this same Constitution, (*trastornar,*) he is to suffer death: much more, surely, by parity of reason, must he, on the assumption made by that same article, (213,) namely, that he has actually been a subversor of it, which being admitted, he, whether the fact be so or not, is to be deemed and taken to have subverted it. Under the two articles taken together, what then is to be done with him? Under article 213, he is in the first place to be put to death,—put to death in the first degree, or put to death as if he had been (though he has not been) a subvertor of the Constitution in the first degree: whatever is meant by the first degree, which is more than I can take upon me to divine: and, when the breath is out of his body, then it is that he is to be shut up in the fortress, and so forth, as above.

Now, Sir, suppose prosecution under these two articles, one or both of them. Figure to yourself advocates pleading, and think what a widow's cruise of learned arguments! learned arguments upon the proper meaning of the two momentous words *trastornar* and *subvertir,* whence *subversor:* learned arguments, for the purpose of settling whether the two modes of action, thus differently designated, are different or the same.

But two articles after that, comes another, (Art. 215,) according to which every Spaniard, who, by word of mouth or by writing, propagates any other *maxim* or doctrine, which has a direct tendency to destroy or subvert (*destruir ó trastornar*) that same Constitution, is to suffer imprisonment: imprisonment, from two to six years, besides loss of employment, and so forth; but nothing is here said of fortresses or adjacent isles. As to *other,* it means (as it should seem, though this is not said) *other* than what is specified in the last preceding article (214.) More learning, poured forth upon the question; wherein consists the difference,—the difference between the endeavouring to persuade men that the Constitution OUGHT *not to be kept,* and the *propagating a maxim or doctrine tending to destroy or subvert that same Constitution?* Supposing a difference, the latter of the two offences seems, to a plain understanding, to have in it the larger dose of ill-will, and, if there be any mischief in the case, of mischief. For my own part, I have had the misfortune to conceive, and the temerity to declare in print, an opinion that in this same Constitution there is this and that article, that had better *not* be kept than *kept:* but, notwithstanding all the imperfections I think I see in this same Constitution, I set much too high a value on it to use my endeavours, or so much as to harbour a wish, to see any such fate as can be aptly expressed by the words destruction or subversion, befall any part that to me seems good in it.

Not more than three articles after this, comes article 218, which says, "Whatever person," (and this is not confined to Spaniards) "whatever person, by word of mouth or by writing, shall provoke any one to the non-observance of the Constitution, *with satires or invectives,*" shall suffer—what? death, and then imprisonment, as above? Oh, no! in the course of half a page, all such severity seems already to have been forgotten. What he is to do now, is to pay a fine of from ten to fifty dollars (*duros,*) or else suffer arrest (*arresto*) for from fifteen days to four months; and, if he be a public functionary, the punishment is in both cases to be doubled.

To so plain a man as myself, the endeavouring to provoke men to a purposed *non-observance* (inobservancia) of the Constitution—under which words I should suppose that any open and avowed disobedience to this or that one of its ordinances would be regarded as comprehended,—seems to have rather more of mischief in it than the using a discourse, the object of which were simply to produce an opinion, that it ought not to be kept; under which words, it would seem to me that any discourse might be comprehended, having for its object to show that it would be for the advantage of the nation, that by the competent authority, this or that article in it should be repealed or altered. If so, I do not see, how, in any view commonly taken of the matter,—how it is, that by the employing on this occasion *satires* or *invectives,* (whatever be meant by *satires* or *invectives,* words loose enough to call forth learning in abundance,) how it is, that by the employing of poisoned weapons in either of these shapes, the malignity or the mischievousness of the offence, if it has any should be diminished.

It seems to be by some principle, though from a principle which I am altogether unable to reach so much as by conjecture, that

Digitized by Google

the comparative encouragement thus given to *satires and invectives*, was prescribed. In Article 327, compared with that which stands next after it, I find another proof of the influence of this same principle, whatever it be. By Article 327, the offence described is that of him, who "by word of mouth shall excite or provoke directly (*directamente*) to disobedience to the Government (*Gobierno*) or to any public authority." This is one branch of the offence: then comes a second, "or to resist or impede the execution of any law, or other act, of those" (*acto de los:* quere, whether those *acts* or those *persons?*) "expressed (*espresados*) in Article 325." So much for the description of the offence. Thereupon comes the description of the punishment: "reclusion or prison (*prision*,) for from six to eighteen months, if the excitation or provocation has not taken effect: in the opposite case, (so I understand *pero en este caso*,) from one year to four years."

Thus much for Article 327, in which nothing is said of *satires or invectives*. Then comes Article 328. Here the description of the offence agrees, as to part of it, with the description given, in the last preceding article, of the first branch of the offence created by it. He who "by word of mouth or by writing" (as before) "shall provoke" (the word *excite* is now omitted) "with satires or invectives to disobedience to *any law*, or to the Gobierno, or other public authority." So much for the offence. Now for the punishment. Instead of *reclusion* or *prision* for from six to eighteen months, *arrest* for from fifteen days to two months at the utmost, with an alternative of a mulct of 180 dollars, with loss of employment, &c., if the offender be a public functionary, &c.; the wording and pointing being so ambiguous, as to leave it at the option of the judge to let off the offender with the fine, in case of his not being a public functionary, &c.

Thus then you see, Sir, if, in the endeavours used by him to provoke men to the disobedience in question, a man abstains from all satires and invectives, he may suffer as much as eighteen months of reclusion or imprisonment, nor can he suffer less than six months; but if, on this same occasion, he indulges himself in *satires and invectives*, in this case his *arrest* cannot last longer than two months, and may be limited to fifteen days.

Note, that as to what is meant by the laws or other acts, said as above in Article 327, to be "expressed in Article 325," you are sent for it of course to Art. 325: when you have got there, you are sent to Article 290; and when you are at 290, you find yourself in a labyrinth, the clue to which I should scarce hope to be able to find, if my life depended on it; but at the end of it what I do find is four years of reclusion. Next to this article, and for the declared purpose of an explanation of it, comes Article 291: for the meaning of which you are further sent to four articles more, all in the lump, namely, 326, 341, 353, and 356: when you are at 353, you are sent to 346, and to 344; when you are at 346, you are sent to the whole cluster of articles contained in Title iii. of Part ii.; and to another cluster, contained in Chapter iii. of Title vi. of that same Part ii.

In the entanglement, produced by the indirect mode of designation above exemplified, may be seen a sort of instrument, of which, considered as applied to the field of legislation, the gentlemen in question, so far as recollection serves me, are the inventors. In some instances, the reference is in the simple form: from one article you are simply sent on to another: and here you suffer nothing worse than useless labour. But, in other instances, and these most unhappily numerous, words significative of *relation* are employed,—equally (*igualmente*), in the *same* manner. Whatsoever may be the decoration added by this contrivance, not small is the price paid for it: paid for it by the subject citizen, in the shape of serious inconvenience suffered. By it, is thus imposed upon the reader, the task of comparing the article which is clearly to the purpose, with another which may be to the purpose, or not, as it may happen; and in either case the task of establishing the fact of the identity of signification, or, in case of difference, the nature and extent of the difference: neither in the memory nor in the conception, can an article be lodged, without being coupled with another, or others, which do not belong to it. Thus, a burthen, which, taken at its *minimum*, is but too heavy, receives from this artificial contrivance an indefinite increase: and, as the result may, in each instance, be a degree of perplexity and uncertainty, to which no limits can be assigned, as little can any limits short of death be assigned to the mischief, to which, in case of an interpretation deemed erroneous by the judge, the citizen may be subjected: for, such may be the mischief, in a case in which death is the appointed punishment; which case, as above, is that provided for by Art. 191—the very first of the offence-creating articles in the Code. The citizen, when thus perplexed, if rich enough to take the chance for saving himself, repairs to a lawyer: which lawyer perhaps finds himself equally perplexed. But, for the suffering of the perplexed lawyer, compensation to his own satisfaction, is made: while by his unhappy client, in addition to his perplexity, comes, instead of compensation, the burthen of affording the compensation to the professional man, by whom the perplexity has or has not been decreased, and by whom security against the mischief has or has not been afforded. (*Asimismo*) as well (*tambien*) and so forth: and here, to the simple labour are added, not unfrequently, perplexity and uncertainty to an indefinite degree.

Such is the entanglement that has place, when there are but two articles thus unnecessarily and incommodiously connected; when, with the article with which you have to do, no

Digitized by Google

more than one other with which you have nothing to do, is linked. What then must be the embarrassment, when, from the only one with which you have anything to do, you are sent on pain of not knowing what it means, to a second, with which you have nothing to do; from the second to a third; from the third to a cluster of others; from each of them perhaps to another or others? But, such is the frequency with which this mode of designation occurs in this same Code, that scarcely have I opened a page without finding instances of the employment given to it. Quite sufficient (one should have thought) are the difficulties inseparable from the subject, without its being clogged by any such useless and factitious instruments of uncertainty and embarrassment.

Having no example in anything that was ever written on the subject, nor any particular use that I can discover, this mode of expression presents itself to me as having something of a *colloquial* cast: as such, it operates in confirmation of the suspicion before intimated, that in the course of gentlemen's studies, the fascinating art of *rhetoric* has obtained rather too much of their attention, at the expense of the repulsive art of *logic*.

Thus much, by the by, for a specimen of the use made of *references*. But, of the proposed Code there are certain parts, which, it should seem, gentlemen make sure of finding lodged in the memory of every individual, who stands exposed to the temptation of committing an offence in any shape. Of these parts, one is—*that* in which an enumeration is made of the several modes of punishment. Being able to read, and having time sufficient to dip into some parts of this composition, though not to read so much as perhaps a twentieth part of it, my good fortune had conducted me to page 10, in which that enumeration is commenced. I was thus preserved from an error into which I might have fallen otherwise. Seeing how far this composition was from any steady observance of that indispensably useful instrument of certainty in a law, *ideis eisdem verba eadem, to the same ideas the same words*, the words *reclusion*, *prision*, *arresto*, might have passed upon me, as meant to be designative of the same punishment. Turning, however, to Art. 29, I found that *reclusion* is one sort of punishment, the scene of it being a house of *hard labour*; *prision*, another; the scene of it a *fortress*: both of them ranged under the head of *corporal punishments*. Looking for *arresto*, I found it, to my no small surprise, at a distance from the other two, and under the head of *punishments not corporal*: and in explanation of this word, it was that I found, but in words of the loosest texture, intimation given of some *further* punishments, which were to be considered as attached to all punishments ranged under the head of *corporal punishments*. For the conveying of this intimation, the words *civil effects* are the words employed; and for showing what is to be understood by these civil effects, no reference do I see.

In my Code, every word, the signification of which is not beyond all danger of dispute settled by universal usage, receives a definition: and all words so defined, stand distinguished by one and the same particular *type*: and thus, by means of an alphabetical index, all ambiguity and obscurity may be cleared up in the shortest space of time. In the Code is thus contained a Law Dictionary; that dictionary a complete one, and having the same authority as the text, with every word of which it has been confronted.

Sir, what you have seen hitherto, is no more than a part of what I was led to by Art. 191, being the very first of all the articles in which any description is given of particular offences. When I have done with this same proposed Code, scarcely perhaps shall I have read one-twentieth part of it. To what end should I? No use would there be in my reading it, any further than as I write about it: and if my determination was to go through with it, and say all that it occurred to me to say of it, my life would assuredly be at an end, before my comments were at an end. Sir, you have already had before you that one specimen: before I have done, you may perhaps have before you a few others. What if the whole work should be found to be of a piece with these specimens of it?

"*Oh! but this is not what we meant: we meant so and so.*" This is what I figure to myself gentlemen saying, should it happen to you, Sir, to present to their view this or that passage, in which it might happen to them to suspect that a change might be made, not altogether to its disadvantage. "Gentlemen, only from what the Code itself says, not from what, either in private or even in public, you may, any of you, be pleased to say, your meaning was while penning it,—only from what, in the eyes of everybody, the Code itself says, to the exclusion of whatever may have been said of it by this or that individual, can the meaning of it, in any part of it, be understood."

Sir, there is a very dry, dry indeed, but at the same time not unuseful branch of art and science, denominated *Logic*: upon it, where government is the field of operation,—upon it, as well as upon politics and morals,—hangs life and everything else that man holds dear to him. Upon it, depends the choice of words: of those words by which, according to the interpretation put upon them, man is destroyed or saved. If, in the instance of the gentlemen in question, this wearisome and unamusing art has been among the objects of their studies, the success of those studies has not, I fear, been quite so great as their constituents may, perhaps, see reason to wish it had been. Of all the several articles by which either particular delinquency is described, or particular punishment appointed, the very first (you see Sir,) is among those in which this laxity on

Digitized by Google

the one part, so incompatible with security on the other, has been manifested. To inquire how far onwards a habit so unfortunate has extended its influence, belongs not to the present occasion, nor on any occasion, to any design of mine: to speak of it in the gross, in my view of the matter, it is a radical indisposition, having its root in the *method* which has been pursued, and not curable, but by another and very different one. Of this imperfection, if it be one, I may perhaps, have occasion, Sir, to submit to you, here and there, a few other indications.

Opposite stands a very brilliant and fascinating art, called *Rhetoric*, in which the preliminary discourse I have had such occasion to advert to, evidences no ordinary proficiency: if the time bestowed upon this instrument of fascination had been bestowed upon the instrument of sound instruction, the character of the proposed rule of action would naturally have been somewhat different, and as far as regards national peace, security, and contentment, would not (so it seems to me) have been the worse. If by Rhetoric men are sometimes saved from destruction, as well as sometimes consigned to it, it must be by logic, and in proportion as it is well applied, if they are secured against it.

In their preface, (page xii.,) Gentlemen state the manner in which the whole of their work was parcelled out amongst the five. If so it be that of that same work, the method is not altogether what might have been wished, of whatever imperfection there may be in it, one cause I am inclined to think might be found in this partition treaty. In the observations made in support of my Codification Offer, Section 7, (Draughtsman why single, &c.)* the disadvantages thought to be attached to every such plan of operation are brought to view.

Apropos of "doctrines or maxims."

What if the *doctrines or maxims*, call them which you please, "the direct tendency of which is to destroy or subvert the political constitution of the monarchy"—what, if these doctrines or maxims, for the propagation of which every Spanish propagator is by article 215, to suffer imprisonment from two to six years, with et cæteras, should be found in the Constitution itself? In such a case is the punishment to receive an inexorable application? By its doctrines being to be found in that place, does it the less come under the description here given of the offence? For an example of a thus destructive or subversive doctrine or maxim, take the doctrines or maxims by which, in articles 4 and 13, the greatest happiness of the greatest number is stated as being the only proper end of government. For an example of the tendency of such a doctrine to destroy or subvert the political constitution of the monarchy, namely, by putting the office of monarch out of it, take the following consideration. By a statement which I have before me, taken in the years 1787, 1788, from Spanish sources, the expense of maintaining that one functionary was about one-fourth part of that of the whole expenditure of government: that is to say, the ordinary, avowed, settled, and officially stated expense, over and above whatever was extraordinary and unavowed, though not the less constantly repeated. At present I should not expect to find it quite so much: but, be it what it may, an inference presents itself, as one, the conclusiveness of which would not be materially varied by any denomination, which that portion of the public expenditure has experienced, or seems to be in any likelihood of experiencing. The giving any such application to any part of the public expense, how (may it not be asked?) is it conducive to the greatest happiness of the greatest number? Especially when the whole income is not sufficient for the effective protection of the people against the neighbouring pirates, not to speak of the insurgent privateers; or, of the expense of defending almost all Ultramaria against its inhabitants.

Of the office thus endowed, what is the specific beneficial effect produced in any shape? What effect more obvious or more indubitable, than the giving establishment to a set of men, who, partly by legal power, partly by force, partly by corruption, have it so completely in their power to weaken, and in time to destroy, the *constitutive* power given to the people?—to destroy it? Yes: and through the medium of the share possessed in the *operative* power by their representatives. Two authorities does this projected Code exhibit—two conflicting authorities, who the one of them with one portion of it in hand, the other with that which is next to it, will, if it be but sanctioned and carried into execution, be waging a war of extermination, till the one or the other of them is exterminated.

In the political constitution of the Anglo-American United States there is no such office: and, for this omission, in what respect is anybody the worse?

Of the arrangements thus proposed, for putting to death all persons, by whom any conjunct endeavours shall have been employed for remedying any imperfections in the Constitution, what was the object? To preserve the liberty of the nation, if the gentlemen in question are to be believed. Contrary to the liberty of the nation, according to them, is any such endeavour: for, at the very head of the offences against the liberty of the nation, do I see it placed—Tit. 1. Cap. 1. "Capitulo Primero. De los delitos contra la libertad de la nacion."

As to this word *liberty*, it is a word, the import of which is of so loose a texture, that, in studied discourses on political subjects, I am not (I must confess) very fond of employing it, or of seeing it employed: *security* is a word, in which, in most cases, I find an advantageous substitute for it: *security* against misdeeds by individuals at large: *security* against misdeeds by public functionaries: *security*

* See vol. iv. p. 554.

Digitized by Google

against misdeeds by foreign adversaries—as the case may be. In the present instance, if, by the word *liberty*, as thus employed, *security* in any shape—security against persons of any description, considered in the character of public functionaries, or persons acting under the orders, or in support, of public functionaries—was intended and meant to be afforded, —it must have been *security* not only for individuals, but for a certain class of public functionaries, against enterprises on the part of another class of public functionaries. Be it *security*, be it *liberty*, that was the blessing here in view, I should not, I must confess, have supposed, that anything in favour of it had been intended to be done, by any such arrangement, as that to which I have had occasion, Sir, to request your attention, had it not been for the assurance given in this same title.

Seeing the course taken by Gentlemen in their endeavours to preserve the "*liberty of the nation*," I could not but be alarmed, when I found, that—not content with preserving in *their* way the liberty of the *nation*, they had taken up the determination to preserve in the same way the liberty of the *press*. I should have said, indeed, the preservation of that liberty against abuse. Still, however, it is the liberty of the press that, in a section of the Code exclusively allotted to the purpose, I see taken in hand. "Titulo noveno. De los delitos y culpas de los impresores, libreros y otras personas en el abuso de la libertad de imprenta. Cap. único: Art. 172." Such being the hands into which I saw this instrument of liberty taken—taken by means of a body of arrangements separated and distinguished from all others by a title of its own, I could not but tremble for the fate of it.

Nor, after a glance at the contents, has my anxiety been removed. Sir, I know of one *individual*, of whose desire to see the press in possession of all that liberty which is conducive to the greatest happiness of the greatest number, and of no more than all that liberty, I cannot entertain a doubt: it is your humble servant. In no Code drawn by him will there be any such title. I know even of a *government*, of whose desire to see the press in possession of all that liberty which is conducive to the greatest happiness of the greatest number, and of no more than all that liberty, I cannot entertain a doubt. It is the government of the Anglo-American United States: Sir, in their Code, there is no such title.

For the state of the law in that seat of ever undisturbed internal peace, concord, tranquillity and amity, I must e'en beg leave once more to refer you to that one of my pamphlets, which has for its subject the Liberty of the Press and Public Discussion. Under that government, from the 14th of July, 1798, to the 3d of March, 1801, there existed a law having much the same objects as Titles i. and iii. and ix. of the proposed Code. Viewing the whole of it together, and comparing it with the matter of those titles taken together—viewing both in the lump (for of any such task as that of analyzing either of them there would be no end) its utmost rigour (you will see) was tender mercy. Being, however, the whole of it, plainly useless, and much worse than useless,—creative of a disease, which otherwise would not have had existence,—having but one good thing belonging to it, which was its temporariness as above,—it was suffered to expire: the authors of it, at that time the leaders of one of the two then contending parties, lost thereby the public confidence, and with it their political influence. That party (the aristocratical) having expired,—ask there for *parties*, no such thing will you find.

In every Code, in which I see any such title as *the liberty of the press*, I look of course for the destruction of it. I look to the committee's Code, and I have not been disappointed. In no one of all the Anglo-American United States is any desire more universal, or more intense, than that of seeing this liberty preserved. Accordingly in no one of the Codes is there any such title. What I shall have to say on the subject comes in of course, and no otherwise than in an incidental way, under the head of *offences against reputation*. To offences of this class, where the individuals injured are public functionaries considered as such, my Code, so far from regarding the circumstance as a cause of aggravation, gives some indulgence. The indulgence has for its ground the great importance it is of, that no misdeeds of men in that situation should remain unknown, and the more than ordinary facility, which, in case of the groundlessness of the imputation, they have for defending themselves: for defending themselves, or rather of being defended by others, without having the trouble to defend themselves. See my accompanying tract on the liberty of the press. But this indulgence I confine to the case of *temerity*: for, in the case where the falsehood disseminated by the disseminator himself is known to be a falsehood, though in this case disproof and refutation are so much more easy to men in power than to men not in power, still I see no need, nor therefore any warrant, for manifesting indulgence to immorality in a shape so mischievous. A distinction which on this occasion I am careful to make, is *that* between *defamation* and *vituperation*: defamation, the imputing to the person in question, the having done this or that specific act of a punishable or disreputable nature; vituperation, the mere expression of dislike to the individual, in terms of a reproachful and offensive nature. Of these, in proportion as they are understood to be unmerited, the punishment naturally attached, falls of itself on the head of the offender, and with small, if any, assistance from factitious punishment, suffices for the purpose. In case of defamation, the law of England (it is that part of the law which is made by judges and reporters of their decisions) disallows the proof of the truth of the imputation in the

Digitized by Google

character of a cause of exemption from punishment: for the law made by these creatures and dependants of the Monarch, has for one of its effects (it is needless to add its objects) the providing a screen for delinquency in every shape, on the part of themselves, and of their associates in the system of misrule. Bad as it was in principle, even the exploded Anglo-American law just mentioned gives express allowance to this proof.

[* A rule which has been established by lawyers in England, and which I should expect to find adopted by the fraternity in the United States, prohibits indeed, in case of defamation, the interrogation of the party defamed, for the purpose of proving the truth of the fact imputed to him: and prohibits it,—not only in a civil suit in which he is the avowed plaintiff, but also in a criminal suit, which, while it has the king for the nominal, has the individual for the real, plaintiff. My Code allows it in most cases, and in particular where the party defamed is a public functionary, defamed as such. In one of the two above-mentioned cases, the prohibition has its foundation in an ill-expressed Latin rule, made nobody knows when, by nobody knows who, namely, *Nemo tenetur se-ipsum accusare:* as if *confession* were *accusation*. In proportion as laws are tyrannical, this contrivance for giving impunity to delinquents is beneficial: nor could I think of expunging it out of any such system of law as in England we have, or from any such as if the force of law is given to this proposed Code, Spain will have: suppose the laws not tyrannical, the rule, and the imaginary law made out of it, is purely mischievous: on better ground, in tenderness to the accused defendant, would all other testimony be excluded: for who is so little likely to give false testimony to a man's disadvantage as the man himself is? But, in such a government as we have, and Spain seems in danger of having, in a word in a government which has for its object the sacrifice of the many to the few, the best thing that can happen is—that all offences that are such merely against government, should go unpunished, and be followed by their designed effect. Of this portentously absurd rule, those, according to whom the greatest happiness of the greatest number is the only proper end of government, lay fast hold, for the sake of the application made of it to offences against government:—to offences against those laws which, having for their end in view the sacrifice of the happiness of the greatest number to the separate interest of the ruling few by whom they were made, would of course, if carried into anything like full effect, render the greatest number miserable. Lovers of the people cherish the absurd rule, for the sake of this particular application which cannot be refused to it. Lawyers cherish it, for the sake of the protection and encouragement it gives to delinquency in all shapes, giving proportionable increase to the number of their customers. For this reason, in every country, it is the interest of lawyers to see depravity consummate: accordingly in every country, it is, to the utmost of their power, their endeavour to keep or render it so.]

This collection of arrangements, in which such special care is taken of the press—such anxiety manifested for preserving its liberty from abuse,—this collection of arrangements—stands exhibited in 12 articles, namely, those from 592 to 604 inclusive; and occupies 4 out of the 240 pages of the Code. I have glanced over it. The result is—a confirmation of the conception above brought to view: namely, that, at any rate on the 21st of April, 1821, *that* being the declared day of signature, the wish and endeavour of the gentlemen in question was, at the prices there expressed in the shape of capital and other punishments, to prevent as far as possible the diffusion of all ideas whatsoever, that should, in any degree, be productive of sensations of an unpleasant nature in their own minds, or in the minds of any person in connexion with them: trusting, as they would naturally do, that by the same interests, prepossessions and affections,—their successors, whosoever they were, would, by so universally convenient an arrangement as this of theirs, be fixed in those same wishes and endeavours: that, in this view, their endeavour was—to keep the eyes of their fellow-citizens for ever hermetically sealed, against all written or printed discourses, the tendency of which should be to produce any such unpleasant effect: and that it is in this same view that, by article 602, they have extended the exclusion to discourses, in the Spanish language, printed elsewhere than in Spain, and by articles 598 and 601, to discourses of the like tendency in any language other than the Spanish, wheresoever printed.

If there be any one foreigner who, more than any other, not to say more than all others put together, has been the object of their jealousy, who can it be, Sir, but your unfortunate humble servant? And if such were their wishes in relation to him even from the first, what will they be, should ever any such provocation meet their eyes, as cannot but be afforded by so unwelcome a proof as this is which is now given in obedience to your commands?

For the purpose of keeping matter such as the above from the eyes of constituents, what then is the punishment which the proposed Code provides? Sir, you have seen already—the punishment of death. From this punishment, fortunately for him, true it is that, by remoteness from your country, the *person* of your above-mentioned humble servant is kept safe. But, by the terror of that same punishment, any the most useful of communications which in his eyes it would be worth his while to make, are not the less effectually excluded.

On this occasion permit me, Sir, to recall to

* In the original letter, this passage which is in brackets, was omitted

Digitized by Google

your view that same leading article (article 191) in which death is the punishment, appointed for every person by whom endeavours shall have been used to bring about any *alteration* in the political constitution of the Spanish Monarchy. In speaking of that article, one word, nor that an altogether immaterial one, I must acknowledge the having omitted the mention of. This is the word *conspirare*—to conspire. The omission had not for its cause either oversight or any deceptious design: or in short any other cause than the convenience there is in speaking of no more than one thing at a time. No such effect had it (no such effect had the omission I mean) as that of narrowing or otherwise varying the description of the offence, unless, in the breast of a man who is not insane, any such endeavour or design can be supposed to have place, as that of effecting an alteration of the kind in question by his own single power, without aid from any one else.

The truth is—that, on this occasion, it was my own unfortunate case that occupied the first place in my view: for, saving all proper exceptions, such is the nature of man, self will on every occasion be intruding itself. Among my own *endeavours* as well as designs, has been *that* of causing to be printed in the Spanish language and circulated in Spain, written discourses more than one, in relation to which I cannot flatter myself with any the faintest hope, that, in the minds of gentlemen, the sight of them could fail of producing, though to my own most sincere regret, sensations of a cast more or less unpleasant: nor, in regard to some of those same writings, can I help being sincerely apprehensive, that, in the eyes of the gentlemen in question, the endeavouring to give publicity to them, would be the endeavouring to produce an "*alteration*" in that same political constitution.

True it is, that on this occasion, so far as regards my own personal safety, I do not, from any such conception in those or any other Spanish breasts, see any cause for apprehension. But an endeavour of this sort could not be used without *assistants:* without assistants, who, in the language of the proposed Code, would be *accomplices:* nor, by and between the principal and such his accomplices, could any correspondence be carried on without that which in the same language would be a *conspiracy*. Among these accomplices would in this case be a *translator*, a *printer* and a *bookseller*. Of these the *translator* might possibly be one, who would not be in any greater danger of death, or whatever were the other punishment, than myself: and to the case of the *printer*, the same consoling possibility may be found applicable. Still there remains the *bookseller*, without whose assistance my plot for the contributing, in conformity to articles 4 and 13 of your Constitution, to the greatest happiness of the greatest number of your fellow-citizens, whatsoever in this shape or in any other may be in my power, could scarcely by any means set itself to work. And thus it is, that if the wish that seems to be entertained as to this matter, by the gentlemen in question, as evidenced by this part of their proposed Code, is carried into effect,—mine stands on the verge of hopelessness.

Even if the net, spread by the word *alterar* in article 191, were not sufficient to catch us, (I mean myself and my accomplices,) another net of not much less amplitude, I see spread for us, in the next article, by the words *embarazar sus sesiones y deliberaciones:* penalty, death as before. For, of the arrangements that my temerity might find to propose, what *embarrassment* it might happen to this or that one to produce in the deliberations of the august body, should they ever come under its view, if it were during the time of its having the happiness of numbering the gentlemen in question among its number, I tremble but to think of.

On this occasion, one little difficulty in particular there is, the effect of which could scarcely fail to produce, more or less of *embarrassment* in the deliberations in question, should any endeavour be thought fit to be used for the solution of it. In pursuance of any such mortally wicked design as those above described, should a man content himself with doing what at present I am doing—that is, with the employing a non-Spanish language in the composition of such his political poisons, —in this case, such is the lenity manifested, by article 598, his portion of punishment is to be no more than the *half* of that which he would suffer were it in the Spanish language. *Duros*, yes: *años*, yes.....but I hope I am not using *satire*, and I am sure I am not using *invective*, when I observe, that neither in Euclid, nor in any other book, would gentlemen be able to find any process, for the bissection of a punishment, of which death is to be the result.

One manifestation more, and that a finishing one, of the care taken by gentlemen for the preservation of the press from abuse, remains yet to be brought to view. 'It is the establishing — Yes, the establishing in regenerated Spain—an *Index Expurgatorius*. An Index Expurgatorius! and by whom composed! composed by no less an authority than a new species of supreme legislature, proposed to be established for this single purpose: a legislature, in which the initiative function is to be exclusively in the *Gobierno*, (the septemvirate of ministers, every one of them appointed and at pleasure removeable by the king:) the initiative function in this *Gobierno*, and the consummative in the Cortes. Of this proposed new legislature, I find mention made—not only in the cluster of articles, which form part of those especially destined to the preservation of the liberty of the press from abuse, namely, in articles 599, 600: but in that preceding cluster, which has for its special destination the preservation of the Spanish mind from

Digitized by Google

error on the field of religion: and, on both occasions, the existence of an instrument of this sort, framed by the new authority just mentioned, is supposed, and in a manner taken for granted.

It is therefore in their zeal in support of religious truth, that, in the exercise of the conjunct attributes of *impeccability* and *infallibility* above spoken of, this manifestation of zeal for truth in general, in the breasts of the gentlemen in question, appears to have taken its rise: and what cannot be denied, is—that by him, whoever he may be, by whom, for the happiness of mankind, those same divine attributes happen to be possessed, exercise too extensive cannot be given to them. But in proof of a man's being so gifted, evidence, something more conclusive than his own insinuation, nay even than his own assertion, however positive, may, it should seem, not altogether unreasonably be required.

Before this finishing measure for the consummation of political security receive the sanction of law, there is one other thing, Sir, which I could not but be glad to see recommended to the consideration of the august assembly, not to speak of the supremely influential body—the *Gobierno*, of whatever individuals it may at this moment be composed. This is—supposing this extraordinary duty on their shoulders, and anything like adequate time for discussion allotted to the business,—whether from year's end to year's end, for the fulfilment of their ordinary duties, there would be so much as a single moment of time left.

I have spoken of *logic*, as an art, which, though not quite so agreeable, has, with reference to the greatest happiness of the greatest number, rather more of the useful in it than the brilliant art of rhetoric. There is moreover another dull and plodding kind of art, which, if a recommendation from me could promise to itself any weight, I would take occasion, from the incident here in question, to recommend to the attention of gentlemen in your exalted station. It is the art of *mensuration*: I do not mean as applied to *land* or *timber*, but as applied to *time*: to time on the one hand, compared with the quantity of business to be done in it on the other. From a want of proficiency in this art, such as it is, two effects both of them of rather an unpleasant nature, are liable to be produced: the exclusion of good measures, and the adoption of bad ones: the exclusion of good ones, for want of their being so much as proposed for consideration; the adoption of bad ones, for want of their being in a sufficient manner made the subjects of consideration. If, of this last-mentioned effect, an example should be desired, a not uninstructive one may, I am inclined to think, be found without much difficulty, in the recently established prohibitive and restrictive commercial, or, as I should rather say, anti-commercial system, under which, trade was to have been increased by the exclusion of customers.

Gentlemen having, in the manner you have been seeing, Sir, shown their sense of the necessity as well as importance of the office of Censor,—having moreover assigned, as and for the whole or a part of its business, the composition and continual completion of this same instrument of legitimate order, I mean the *purifying Index*,—it being also considered how natural, on the part of the inventor of any instrument, the wish is—to see the application of it placed in his own hands,—what if the powers—the whole powers of it were to be conferred on the gentlemen in question, I mean on all five of them, and in a state of exemption from all other cares, during their respective lives? In this power, for further security, might be included not only all actually existing works in their entire state, but all such *doctrines or "maxims,"* as, *if* they were in existence, would be possessed of the "*destructive*" or *subversive* tendency so often mentioned. In this case, however if it were in my power to make conditions, one little condition I would venture to propose to them, and that is,—that they would not insist upon attaching to the publication of the books in question, or of the maxims or doctrines in question, any of those severities, by the proposal of which their religious and patriotic zeal has on the present occasion manifested itself. No, Sir: if in the eyes of the public at large, their intellectual worth be but half as great, as, from the above quoted passage in their preface, it should seem to be in their own, the authority of their names, when employed in marking out for exclusion from all eyes and ears the obnoxious works, will be quite sufficient, without the aid of penal visitation or physical repression, performed in the proposed or any other shapes.

After all, thus much must be confessed:—be the instrument what it may, destroy the instrument you prevent the abuse of it: destroy eyes, you prevent the abuse of eyes: destroy ears, you prevent the abuse of ears: destroy hands, you prevent the abuse of hands. destroy liberty, you prevent the abuse of liberty. Such would be the effect, supposing the destruction total, and thence impartial. But, so far as either the liberty of the press, or the liberty of discourse through the medium of any other instrument, is the subject, the destruction which the gentlemen in question aim at effecting—the destruction, which they even profess to aim at effecting—is not total and thence impartial, but decidedly partial: and being so, the effect of it, in so far as it has any, will be—not to prevent, but to establish and secure, the abuse of the liberty of the press; in a word, of the liberty of discourse: of the whole of that branch of liberty which they thus take in hand. For wheresoever, by any person, on any controverted point, a judgment is to be pronounced,—what can be a greater abuse of the faculty of discourse, than the keeping all the arguments on one side in a

Digitized by Google

state of suppression, or though it be but restriction, while those on the other are left in a state of liberty? of absolute, or even though it were but comparative, liberty?

In regard to this matter, one very simply expressible mistake seems, from first to last, to have taken possession of gentlemen's minds, and guided their operations: I mean, the mistaking a *cause* for a *remedy:* the taking, for a remedy to the disease they have had in view —for a remedy and that an indispensable one that very morbific cause, but for which the disease would not have had existence. Supposing that to be the case, apply the supposed remedy, you produce the disease: burn the remedy, you kill the disease. Such, after a three years' experience of the imagined remedy was the practice of the Anglo-American United States: and, after twenty years of uninterrupted experience, the salutary efficacy of that same practice has received in the face of all mankind as complete perhaps a confirmation, as any practice, political or even physical, ever yet exhibited.

LETTER IV.

On the severity of the ulterior means, employed for securing against amendment, all imperfections in the political system, and for preventing the national will from manifesting itself.

SIR,—In the title of this fourth letter, as it is announced in the first, the words *severity of the* were, I fear, omitted. They are requisite, however, for giving expression to the idea, which, in reviewing that part of the matter, and penning a title for it, was uppermost in my mind. On a second glance, along with what bears special reference to that circumstance, I find some matters, of which the same thing cannot, I must confess, be said with equal propriety.

On the other hand, the subject, on which it touches, is one of which special notice is taken in your letter: what is said in relation to it will help to prove the respect with which your commands have been attended to; and whatever may be the offence committed against the laws of method as above, it is on this circumstance I must rely for whatever atonement it may be in my power to make.

Pena de muerte! Pena de muerte! Pena de muerte! By these words, I see, with grief of heart, a war of mutual extermination organized; Code in hand, I see partisans of the king and partisans of the people, under the name of partisans of the Constitution, slaughtering each other, and thus maintaining order in the legitimate style. No man can serve two masters. So at least I have read somewhere: and I am inclined to think there may be some truth in it. Looking to the people of your peninsula, I see two masters made for them: one all head without body: the other all body without head. No man being able to serve both masters, I can see no man who is safe. In the Anglo-American Union, no man has any master; and there everybody is safe.

In that seat of universal security, there were, for a course of years, two parties, and between them war was waged with a fury not to be exceeded, even among you. The weapons, however, were words only, not swords or bullets: "satires and invectives" met in incessant clouds: but they met tax-free: no *duros* were ever paid for them: ink flowed in torrents: ink on both sides: but, of blood, not a drop on either side. Little by little, the less liberal party was silently absorbed into the more liberal: finally there is no party, and now, even in words, it is all peace.

Yes, Sir, between the death to preserve "liberty" (Tit. 1. Cap. 1.) and the death to preserve "Monarchy," (Tit. 1. Cap. 2.) I see every man between two fires.

Remembering the use made, on a former occasion, of the word *corporation*, as mentioned in my tract on the liberty of the press, &c., I see in Article 191 a somewhat more efficient use found for it. A sympathy, I hope not unpardonable, places before me, on this occasion, my brethren of the Cross of Malta. If they are tired of life, the words "*ó á que se radiquen en otras corporaciones ó individuos,*" may upon occasion help them to get rid of it.

But, perhaps, the citizens who, all over the kingdom (if our newspapers do not deceive me) are still meeting for the purpose of considering what, under articles 4 and 18 of the Constitution, may be most conducive to the greatest happiness of the greatest number, if it were only that they may learn how to give their votes,—may not be quite so eager to see themselves killed, as the Committee seems to be to see them killed: and, if they are not altogether pleased at the thoughts of being killed under the name of citizens, I should not expect to find that the thoughts of being killed under the name of members of corporations would render them more so.

For how many things which they themselves have done, and which I cannot but applaud them for having done, do I not see gentlemen appointing this same punishment of death! the only punishment, the mischief of which is, in case of misapplication, altogether out of the reach of remedy! Right, that which at the moment suits us: wrong, that which does not suit us:—this, or something like it, is it not the principle?

As it is with vituperation and defamation,

Digitized by Google

so, without much difference, is it with sedition, insurrection, and their et cæteras. In a government that has for its object the greatest happiness of the greatest number, little or no need is there for any such denominations with exclusively appropriated punishments. A public functionary is a *man:* gentlemen do not seem to me to be altogether aware of this: with my respectful compliments, do me the favour, Sir, to convey to them the information of it. A public functionary is a man. Not only is his reputation the reputation, but his person the person, his property the property, of a man. By sedition and so forth, if any real mischief is done by it, it is to the person or the property of some man that the mischief is done. Ill indeed must the public functionary, whoever he is—the Monarch if there be one, ill indeed must he have comported himself, if, on the part of the people at large, there is not, on every occasion, and in all manner of ways, more promptitude to afford protection against injury, in this or any other shape, to him, than to an individual not so distinguished.

In a country, the government of which has for its end in view the greatest happiness of the greatest number, let a man seditionize—let a man insurrect—see what he will get by it. He will be laughed at: laughed at, as an untoward lamb might be, if seen running and butting against its mother: he would be laughed at, and there would be an end of it. Colonel Burr insurrected: Colonel Burr tried to make himself Emperor of Mexico: Colonel Burr thought to make himself Emperor of the United States: many is the laugh I have had with him about all this—I, who write to you. In the United States, has he had his entrails torn out of his body? a man in his place would have been so dealt with in England: has he seen them burnt before his face? No: there he is in New York, subsisting quietly, as other lawyers do, upon the indiscriminate defence of right or wrong, now at the end of his career, just as he did at the commencement of it. Ask Miss Wright, Sir, if it be not so—see what her book, (Views of Society and Manners in America, by an Englishwoman,) translated ere this into French, says of him in one of the notes.

Out of the 639,—*that* being the whole number of the articles in the Code, deduction made of those general ones, 190 in number, which are not occupied in the creation of particular offences, or the appointment of particular punishments,—out of this number of 639, not more than 89 had I run over before I had counted 21 as the number of times in which this same punishment of death had been attached to so many different offences. True it is that, in speaking of penal laws, to speak of the multitude of the laws as a conclusive proof of severity on the part of the whole system,—to speak of *multitude* in this case without notice taken of *extent*,—is, I am fully aware, a mode of speaking no less pregnant with misconception than it is frequent. In the English chaos, for example, where stealing or destruction is the mischief to be obviated, you have one law for one sort of vegetable, another for another: and so throughout: a plan, according to which, the vegetable kingdom would of itself, if all other penal laws were abrogated, furnish matter for between 50,000 and 100,000 of them, and still leave all but a small part of the field of mischievous delinquency uncovered. But in the present instance, the rigour of the punishment will be found not mismatched by the amplitude of its extent.

But the striking and deplorable circumstance, is—to find the highest lot in the scale of punishment attached to so great an extent, to acts, in regard to which, in that system of law which is productive of the happiest effects, it is after such a length of experience universally understood and acknowledged, that there exists not any demand for punishment in any shape.

As to the taking of these cases, or any of them, one by one, and, by a regular application made of pre-established principles, considering, in the first place, whether the act ought to be placed upon the list of offences, in the next place, whether death would be an apt punishment for it, and if not what other would be,—no such discussion, Sir, can I, upon the present occasion, think of attempting to trouble you with. In any Code of my drawing, this would be done, and in a manner which in my eyes would be complete, at a much less expense of words than the least that could be bestowed upon it in any work having for its subject a Code by another hand, even supposing the particular arrangements determined by a set of pre-established and declared principles: and not, like the one in question, so completely and even avowedly unprincipled, that a volume might be occupied in the endeavour to reach by conjectures, antecedently to examination, the considerations that, in the character of *reasons*, *may* have given birth to this or that one article.

On the subject of *religion* indeed, it being the only one which has received any special mention in your letter, I had, at the time when the first of these of mine were sent off, written a few pages, to which I thought of giving insertion in this. But, by a second glance on this part of the proposed Code, observation was insensibly and perhaps unfortunately elicited, in a quantity much too great to be consigned to a letter, in which any other subject were brought to view. Should it ever reach your hands, Sir, it will accordingly be in the form of a 7th letter, written in addition to those announced in the first.

One word more about death: about the grim tyrant, and the once established and, established or not, everywhere honoured Code, by which the door was shut against him. Seeing the use made by the gentlemen in question of this instrument, hardly should I have expected

Digitized by Google

to find that of these "*most esteemed European Codes*," the wisdom of which (as p. xii. of their Preliminary Discourse informs us) they had made theirs, this same Tuscan Code had been one: this same Tuscan Code, in which, of this same instrument, no use at all was made. Either my memory deceives me greatly, or, in some authentic statements made at the time, I read, that after the innovation thus introduced, —though anything like the whole of the benefit which by its leniency the Code was calculated to produce, had not yet had time to manifest itself,—the number of those crimes, to which the punishment of death had been used to be attached, had not received increase. Yet so it is, that not only the Code of the French Constitutional Assembly of 1791, but this same celebrated Tuscan Code, had passed under their review. So in page xv. of their Preliminary Discourse they expressly tell—*us* I was going to say—I beg their pardon, Sir, I should have said tell—*their colleagues*.

P.S. Before this letter goes to the post, I have just time to acknowledge the receipt of a 2d letter from you, dated Paris, 26 Sep. 1821.

Though what was said of me by our friend was the pure result of his own generous zeal, and altogether without warrant from me,—the consequence which has resulted from it is—not in the less, but in the greater degree, a source of gratitude in my mind as towards him, as well as satisfaction and pride on my own account: for, never was declaration more sincere than mine was, when I spoke of myself as receiving honour as well as pleasure from such a correspondence. Few things could have contributed more strongly to confirm me in that sentiment, than the frankness of your consent, to that publicity, by which, whatsoever service such a correspondence may be capable of rendering to that country which is the object of our common affection, will be so effectually cleared, of the inconveniences with which it would otherwise have been clogged.

At the same time, believe me, Sir, it is not without the sincerest sympathy and unfeigned uneasiness that I can reflect, as I have but too much and too frequent occasion to do, on the invidious and unpleasant situation in which it has been impossible for me to avoid placing you, by the necessarily unwelcome freedom, which I have all along found myself compelled to use in speaking of this production of your illustrious colleagues. For, how can they do otherwise than behold in you the cause of so many strictures, of which, should they be thought to amount to anything, sensations, of a nature very far from pleasant, cannot but be the result? But, in the opposite case, and in proportion to the importance of any of the suggestions which it has fallen in my way to submit to you, the warmer your love for that country of which you are one of the most conspicuous and brightest ornaments, the more valuable in your account will be the indemnification, which, in the character of a Spanish citizen and a representative of the Spanish nation, you will receive.

LETTER V.

Further grounds for the apprehension that, by the proposed Code, the interest of the subject many is, designedly or undesignedly, sacrificed to that of the ruling few.

Strange indeed, unexampled indeed, would the case be, if it were otherwise: but, so far from being a reason for the omitting the mention of any instances in which it is exemplified, the strength of the propensity in human nature to produce such sacrifices, is a reason why the search after them should be the more rigid, and the display of them the more complete.

To attempt to bring to view the several particulars, by the observation of which a supicion to this effect was produced, would be to attempt to bring to view little less than the whole contents of that same official and pre-eminently important work. I must content myself with a few samples. But they shall be such as are either all-comprehensive in their extent, or do not want much of being so.

Example 1. *Fundamental principle neglected.* What I have here in view is—the profound silence as to the fundamental principle of the Constitutional Code: as to the two leading articles 4 and 13, into which by far the greatest part of its merit and beneficial influence is condensed: namely, the so often mentioned principle, by which the *greatest happiness of the greatest number* is laid down in form in the character of the proper end of government, and as the object to the attainment of which the several arrangements of detail included in that same Code, were meant to be understood as having accordingly been directed. The application, which this your troublesome humble servant makes, of this instrument of Spanish construction—you see, Sir, how continual and indefatigable it is: it is a light, by which every step in his career is lighted. Such is the use made of it by an Englishman. The gentlemen in question being Spaniards, how comes it that, all the time that they have been at their work, this matchless Spanish instrument has been lying in its case? how comes it, that these articles, to which, from first to last, reference express or tacit could not consistently with consistency have been omitted, remains from first to last a dead letter in their hands?

These same articles of this Code,—for what purpose were they put there? Was it only for show? The authors of that same Code—

Digitized by Google

was it not their intention the principle should be made use of? The articles—were they placed there in no other character than that of so many flowers of rhetoric?

But, the authors of this proposed penal Code, it is with them that our concern is at present. Of the neglect in which they have left this light of lights, what can have been the cause? Sir, can it have been any other than this; namely, that it did not suit their purposes? From what follows, your judgment on this point may perhaps acquire some assistance.

Example 2. *Rationale rejected.* What is above leads me immediately to the matter of the *rationale.*

Of my plan, the rationale is an *essential*, I should rather say *the characteristic*, feature. But what does it consist in? In neither more nor less than the undiscontinued application of the above-mentioned fundamental principle: an application of this basis of your constitution to every the minutest line in the several arrangements, by the making of which, the operations of the legislator are carried on. In the very act of proposing this accompaniment, a sort of challenge to all legislative draughtsmen was contained. From the challenge thus given, the gentlemen in question shrunk. Why, Sir, did they shrink from it? To their constituents, as I have shown, to the subject-citizen as such, it would have been at once a source of *interpretation*—a fund of *instruction*, *moral* as well as *political*—a source of *security*, satisfaction and comfort: a source of security against arbitrary rule in the hands of the *legislator*, and against arbitrary interpretation in the mouth of the *judge*: to the judge, a continual *guide*, but at the same time as continual a *bridle*: to the body of the law, in the whole and every part of it, an *anchor*, giving stability, just so far, and no further, as reason, assisted by experience, shall have shown that stability will be conducive to the all-comprehensive and all-commanding end so often mentioned. This being among the undeniable properties of the instrument in question, why, Sir, I ask once more, did gentlemen shrink from it when offered to their hands? Sir, I will tell you plainly. They had two *reasons*, for turning their backs upon an instrument, the matter of which is composed of *reasons* in another sense. In it they saw a *guide*, but a guide whose course it did not on every occasion suit them to pursue. In it they saw a guide, but in it they at the same time felt a *bridle*: and all this in both their capacities, that of legislative draughtsmen, and that of sanctionative legislators. To which may perhaps be added, that, not impossibly in their view of the matter, to construct, and make undiscontinued application of, an instrument of this nature, was not quite so easy as to propose it.

In that paper of mine, the heads of which I have had occasion to submit to you in the first of these my letters, the two last heads are Section 10. "*On the part of an individual proposing himself as draughtsman, &c., willingness or unwillingness to interweave in his draught, a rationale as above, is the most conclusive preliminary test, and that an indispensable one, of appropriate aptitude in relation to it;* Section 11. *On the part of a ruler, willingness or unwillingness to see established an all-comprehensive Code, with its rationale, as above, . . . is among the most conclusive tests of appropriate aptitude with reference to such his situation.*"* *Among* the most conclusive, I said: speaking of a ruler, in whatever rank and in whatever department: and, when speaking of a ruler in the rank of supreme legislator, or in that of possessor of a share in that all-commanding power, might I not have said absolutely *the* most conclusive?

Sir, the time, at which these propositions with the demonstration of them were penned, was by a long time anterior to that in which, by your favour, the proposed Code with the preliminary discourse prefixed to it came into my hands. To my mind, no otherwise were the authors of that work present, than all other men, by whom that same or the like pre-eminent situation shall have been filled, were, are, and will be present. But, if and so far as that which of all men without exception in their situation is there said, is true,—of them in particular it is true: nor can it, consistently either with sincerity, or consistency, be retracted.

In that work of mine, in which, of the sort of instrument in question, with its use, a description more or less particular is given,—in that work, the existence of which was assuredly no secret to any member of the Spanish Cortes, nor to any of the gentlemen in question in particular—in that work is even contained a sample of the application made of this same instrument:—a sample of the mode of applying it, and of the sort of work produced by it. To judge from a paragraph in their preliminary discourse, it looks as if somebody or other had even been troublesome enough to endeavour to draw their attention to this same part of that same work:—and "*What say you to this?* will not you give us something of this sort in your Code?"—one would think these or some such questions had been put to them: put to them, and in so troublesome a way, that, to this matter, in that same preliminary discourse, something, by way of excuse for their silence on the subject, was thought necessary: at any rate, that on this subject something should be said. Be this as it may, in that same page of theirs, on this same subject, something actually is said.

What is it? Sir, it is what I am truly glad to see. For, (as you have seen already, in the way of *allusion* at least, statement being referred to in another paper,) as in this way, in my dull logic, you have seen reasons *for* the use of reasons,—so here, in their brilliant rhetoric, we have gentlemen's reasons *against* the use of reasons.

First comes their all-comprehensive determination—their determination, respecting all

* See vol. iv., p. 563-4.

Digitized by Google

such parts taken together as come within the field of their labours: then come exceptions, six in number: exceptions, speaking of six points in particular, in relation to which, thus as it were in a parenthesis, such reasons, as it has seemed good to them to submit to your consideration, follow.

With regard to the *tout ensemble*, their determination being—not to give any reasons bearing separately upon the several arrangements, or any of them, with the exception of the six just mentioned,—in the place of the excluded reasons, they give you one reason—one reason, which in their view is a conclusive one—for not giving them. This reason, what is it? Ah! Sir, disallow it if you can,—disallow it, if you can find it in your heart to be so ungenerous. Sir, in the all-sufficiency of that unerring test of right and wrong, which you all, Sir, have the self-satisfaction of bearing in your own breast—it is in that security that they find a succedaneum, to everything, which, on any occasion, it would be in *their* power to find in the shape of a reason: a succedaneum so fully adequate—a substitute so much better than merely adequate, that anything in that way on their part would be worse than useless. To the conclusiveness of this antirational reason, what objection can you oppose? Sincerity will suffice to prevent your disputing it in your own instance; politeness, in that of any of your colleagues.

After an observation, respecting the matter of the *Title* termed by them the Preliminary Title,—namely, that, giving as they do the whole of it, they do not give any part of it over again, regarding as they do any such repetition as useless,—"because," say they, "we regard every such addition as useless" (a conception, in which no man can, I think, refuse concurring with them) after so saying, they go on in page xiii. and say, "As little will the Committee—as little will it give any exposition of the reasons (*raziones*) on which it has grounded the several articles respectively, for that *they* (meaning doubtless the reasons in question) cannot have kept themselves hidden from the superior perspicacity (*illustracion*) of the Congress:" meaning the Cortes, into the ears of which, in full assembly, the stream of this eloquence, I take for granted, was pouring itself forth.

By this *illustracion*, a term for which, in the sense in which it seems here to be employed, I find not, in my own language, any exact equivalent—for *illustration* will not serve—by this one endowment, that which gentlemen appear evidently enough to have in view, is—the pair of contiguous organs, to which I had occasion to make allusion in the second of these letters: namely, the same to which Dr Spurzheim would, after a sufficient inspection, give the denomination of the organs of *impeccability* and *infallibility*: organs, which, without need of any such assistance as that of the ingenious anatomist, all rulers in chief, except of late years those of the Anglo-American United States, have so universally felt upon their own foreheads; and of the extraordinary prominence of which, in their own instance, the authors of your Constitutional Code, so well followed up by these successors of theirs, have given such extraordinarily prominent demonstrations.

Now, Sir, as to these same colleagues of yours, the matter must be left to themselves. But as to yourself, Sir, pardon me,—if so it really be that you are a sharer with them in the good fortune of being in possession of these same organs, or either of them, it is plainly more than you yourself know of: you might as well not have had any such things. Of the possession of any such useful implements had it happened to you to be conscious, never could I have received any such letter, as that, by the receipt of which, your humble servant received that honour, of his gratitude for which you see the fruits. In the course of the contest for your favour, here, Sir, you have two compliments to choose out of: which of them is most in accordance with truth? which of them is most in accordance with your taste?

For the reason above-mentioned, to their colleagues, say the gentlemen in question—to all these representatives of the Spanish nation without exception—any such implement as that same *rationale* would have been useless. Well, for the moment, and for the purpose of the argument, be it so. But these same distinguished citizens, whom, to the number of from 150 to 200, they are thus addressing—in the whole Spanish nation, were they the only individuals, by whom either the faculty called *reason*, or the faculty called *sensibility*, was possessed? The privileged organs in question, by which governors have hitherto regarded themselves as distinguished, are they in your country in the possession of the governed likewise? If so, what need can there be of governors? And here, alas! comes one of the proofs of the position which gives title to this letter:—namely, that, in and by the official work in question, the interest of the subject many is, designedly or undesignedly, sacrificed throughout to the interest of the ruling few. Look, Sir, to the excluded foreigner: look to these your select, your native legislators:—the whole body of their fellow-countrymen, their security, their satisfaction, their instruction—which of all these objects has ever been forgotten by the foreigner? which of all of them was remembered by these their representatives in this effusion of their eloquence? But their colleagues, for whose ears the compliment had been composed—these colleagues were present objects; constituents, all of them distant ones—all of them distant from their thoughts:—by the interest of the select and present and associated *few*, the whole field of their vision was pre-occupied; the interest of *all* was, in their eyes, too minute an object to be a perceptible one.

Six, however, though no greater than six, is the number of those points, to which, in the opinions of these your selected colleagues, your

Digitized by Google

all-sufficiency, Sir, (*yours* is of course here plural,) did not, at that time, extend. Accordingly, in relation to these several points, they proceed, or at least profess, to lay before you their reasons. Why? because these were the points, in relation to which, amongst certain persons not named or indicated, the most considerable controversy had had place. In this controversy it is that they find the source of an obligation, by which they feel themselves called upon to be thus particular: "*solo se cree obligada á indicarlos motivos que en algunos puntos muy controvertidos la inclináron á la opinion que ha abrazado.*" p. xiii. The points are in brief as follow:

1. Drunkenness.—Shall it in any case have the effect of warranting any mitigation of the punishment? Answer: No.
2. Transportation.—Shall it be employed as a punishment?—Answer: At present, no: in the contingent future, yes.
3. Stigmatization.—Shall it be employed as an ingredient in any lot of punishment? Answer: Yes; but in no other case than that of condemnation to hard labour for life.
4. Asylum.—On the ground of its connexion with religious worship, shall any place continue to possess the property of affording impunity to delinquents? Answer: No. This unanimous.
5. Pardon.—Power of pardoning, shall it be continued to the Monarch. Answer: Yes; but subject to certain restrictions. Allusion is made to them, but no reference in figures.
6. Judicatories of exception.—Shall there be any? Answer: Two only; namely, military and ecclesiastical. Military, for military offences; ecclesiastical, for ecclesiastical.

Now then comes a question. All-sufficient with regard to all other points in the legislative compass, how comes it that gentlemen's organs fail them when applied to this half-dozen? Compared to what is left untouched, these are but as so many drops, in that ocean, to which, as above, they have given the character of *the Pacific*. And so, in the conception of these gentlemen, only in so far as controversy has had place, can there be any demand for reason! Sir, among the points touched upon in my Code, whatever may be the number of those to which it has happened to have produced controversy, the number of those to which no such accident has happened, I should expect to find still greater. Is it only as an instrument of victory, Sir, that reason is of any use?

On the above points of exception, to say anything more would be wandering from the announced purpose of this letter. One alone, namely, *Judicatories of exception*, upon looking into the article on this subject in the proposed Code, presented matter which seemed not inapplicable here; and with this the present letter will close.

Example 3. *Method anti-popular employed:*—method, indicative of disregard to the interests of the subject many. In my own Code, the method pursued was suggested, partly by considerations of a purely logical nature, partly by considerations of a moral and political nature. Those of a purely logical nature belong not to the present occasion: those of a mixed nature, partly logical, partly moral and political, apply to it: and by a principle of connexion, of which it has not happened to me to see any notice taken elsewhere.

In regard to the order to be given to the several groups of *acts*, converted by prohibition and punishment into *offences*, considerations of a moral and political, concurred with those of a logical nature, in producing the determination that was pursued.

Where, of one of two objects, a perfect conception may be conveyed, without any conception conveyed or entertained of the other, while the converse of this does not hold good,—give the first place to that one, the conception of which is thus independent of that of the other. On the opposite plan, two objects will unavoidably be spoken of at the same time: the one directly and explicitly, the other indirectly, and in the way of allusion: and confusion will thus throw its clouds on the whole texture of the discourse.

To the domain of logic belongs this rule. By it has arithmetic been guided in the order given to the numbers in the numeration table.

Apply this to the matter of a Penal Code. Of offences against individuals—against individuals determinate and assignable—the mischief is intelligible to all: intelligible in all its shapes, upon the bare mention of it; intelligible, without any the least need of reference to offences against this or that particular class of not assignable individuals, or to any of those against the government, or the nation at large: the offences of which two last divisions have for their common character, that the mischief produced by them affects not any one individual or class exclusively, but, if it affects any one, affects the whole. Of offences of the first description, the mischief may be said to be *actual:* in the case of those of the two last descriptions considered as such, it is only in *tendency* that the act is mischievous. In this or that instance, the mischief which is but in tendency may indeed have actual mischief to any amount for its accompaniment: in which case, the author may be dealt with accordingly: but, when it stands clear of any such accompaniment, the demand, whatever it be, for prohibition and punishment, may still remain: of that mischief which is in tendency only, the correspondent actual mischief forms the sole and indispensable basis. From those of which the mischief is but in tendency, suppose it ascertained that no actual mischief can in any shape result, the ground for placing them

Digitized by Google

in the catalogue of punishable offences vanishes.

Note that, to be *actual*, mischief must consist either of pain or loss of pleasure: pain in some determinate and assignable shape, or loss of pleasure in some determinate and assignable shape.

Such being the order prescribed in the first instance by logic, observe now the consequence of it with regard to morals and politics.

At and from the very commencement, of a Code commencing in this way,—every man perceives, at first view, the benefit it has conferred on him, the care which the legislator has taken of his interest—of his happiness. Let a man but open the Code, by the very first glance he casts upon it, a conception thus satisfactory, how can it fail to be conveyed to him? What man is there, that has not, in some shape or other, a body, a mind, a reputation, property, a condition in life? In the prohibition and punishment, attached to acts, by which, through injury done to those several possessions of his, his happiness is liable to be diminished, he sees the protection which, in these several shapes, has been provided for him by the law. In the legislator he beholds a kind guardian, to whom his welfare, in all its shapes, has been an object of all-comprehensive and laborious solicitude.

Instead of offences against individuals, let offences against the government now occupy the first place. Everywhere but in the Anglo-American United States, religion being seized on and converted into a state-engine, employed in giving support to the power of the rulers, —the care for the support of religion in this character, will, in some way or other, be combined with the care for the support of government.

The protection he now sees afforded, to whom does he see it afforded? To himself? No. But either to an Almighty Being, to whom it cannot be of any use, or to another man or set of men among whom he is not included. Here then you see, Sir, the advantages that have just been brought to view vanish.

Returning now to the former case,—suppose the legislator, by what considerations soever induced, whether by the above logical rule, or by the political consideration—regard for the greatest happiness of the greatest number—suppose him to have, in his Penal Code, begun with giving the first place to the class of offences against individuals. This point settled, suppose him to have taken up the subject of offences against government. The government in question is (suppose) a monarchy: chief functionary, the monarch. What follows? Seeing in this man neither more nor less than a man, he would, perhaps, as in the Anglo-American United States, have regarded the security of this man as being sufficiently provided for, when provided for in exactly the same way as that of all other men: if not, he would at any rate have inquired, whether in this case any difference should be made: and if yes, what, and on which side, and on what account: and so on, in regard to all classes of persons, functionaries or not, by whom, or in whose behalf, he found *privilege* in any shape enjoyed.

Unfortunately, in those same Codes of greatest credit and "reputation in Europe," (p. xii.) drawn as they have all been by men, employed by a supremely ruling one, and themselves belonging to the class of the ruling few;—and of course careless to what degree they made sacrifice of the interests of the subject many, to the interests, real or supposed, of the said ruling few and supremely ruling one;—in these exclusively consulted Codes no such simple and natural order of insertion has been observed. How should it have been? No such order would have suited the purposes the ordainers of them had in view.

In my view of the matter, title to regard is determined, and degree of regard measured, by the numeration table: *two* have title to twice as much regard as *one: three*, to thrice as much; and so on. Accordingly in my Penal Code, my first care being to make provision in the most immediate way for the security of *all*, —thus it is that, no objection to this plan of arrangement presenting itself, nor any special use as derivable from any different one, it is by the cluster of arrangements employed in the establishment of *this* security, that the first place in that same Code is occupied. And thus, by this political consideration, has the order originally suggested by the logical consideration, in my view of the matter, been confirmed.

Not so, in the view taken of the matter by the bespeakers, nor consequently by the makers, of those same supremely accredited Codes. In their view of the matter, title to regard is determined and measured by DIGNITY: a sort of phantasm created by Power, in the imagination of Imbecility, for its own use.

Shaping their practice to this theory,—in the ruling one—in the monarch, who is upon earth—they have seen the vicegerent and express image of the person of him who is in heaven: in him they have seen the one for whose use all others were created; in the subject many, those who were created for his use. In him they have seen all excellence; in them all depravity: between the one and the other they have seen an intermediate class, composed of individuals, whose respective places, in the scale of excellence, moral and political, are in correspondence with their places in the conjunct scales of power, opulence, and factitious dignity:—endowments, derived all of them from the grace and pleasure of the ruling one.

Of this theory, an immediate practical consequence always more or less acted upon, and sometimes even avowed, is—that in the instance of every person to whom the protection

Digitized by Google

is afforded, the punishment, employed in the affording it, ought to be high, in proportion to the height of the level, occupied by him, as above, in that same conjunct scale. Looking then, in the first place, to the heavenly monarch,—in his instance, taking for his opulence, that which it has pleased him to make over to his professional servants, they behold power and dignity infinite. Looking in the next place to his earthly representative, they behold power, opulence, and dignity next to his. In both cases, the practical consequence follows as of course. As for the protection of the mind, the reputation, and the peculiar property of the heavenly monarch,—so for the protection of the body, and condition in life, as well as of the mind, reputation, and property, of his earthly representative,—no punishment can be too afflictive.

Buonaparte and his draughtsmen saw in every *Regicide* a *paricide*. A more convenient vision has been seldom seen. In this same vision, the gentlemen in question (I see) have been partakers. And so—to beget and to kill, to feed and to exhaust, to clothe and to strip, to love and to despise, are one and the same thing. Buonaparte—O "most puissant Prince!" —Buonaparte, upon looking round him, found he had begotten all whom he had left unslaughtered. Thus it is that Rhetoric—O ever ready prostitute!—prostitutes herself to despotism.

By the purely logical consideration, if I remember right, was the order of consideration and expression here in question suggested to me:—by the clearness, which, not only in this but in all other cases, is the result of that course of consideration, in which things connected with one another are taken, as far as may be, one at a time. Ample at the same time was the confirmation, which, in the present case, the logical rule was found to receive, from those considerations, of a moral and political nature, which belong, in a peculiar if not exclusive manner, to this same case. Intimate accordingly, in this case, is the connexion between the logical and the political considerations.

By the *logical* rule it stood ordained, that, in the arrangements by which protection and security were in the way in question afforded, all men without exception should come in in the first place, before any place was assigned to any such arrangements, as those by which additional protection and security came to be afforded, to men standing in this or that particular situation.

But, thereupon comes the *political* consideration:—in so far as distinction and opposition between interest and interest has place, by whom is presented the best title to regard at the hands of the impartial legislator? by whom is presented the title to a preference? by the *few* as such? or by the *many* as such? The question once put, the answer could not be dubious: the question itself presented it. To me it was presented between 50 and 60 years ago, by I know not what little pamphlet of Dr Priestley's: by your Cortes (A. D. 1812) it was adopted, and in articles 4 and 13 of your Constitutional Code, it stands established. And thus it is, that not only for order of consideration and discourse, but for title to regard and degree of regard, you have at once a standard and an example in the *numeration table*. A plainer, a more universally known, a more familiar, a more universally understood, a more indisputable, standard—can it be desired?

Judging of everything by this standard, I saw that, if, to any one more than another, power in any shape were given to be exercised over the rest, it could not, consistently with this standard principle, be given to him in any other character than that of Agent, and Trustee, and in that shape Servant, to the rest. Hence, for as much as, in respect of money, power, or factitious dignity, nothing could by any legislator be done for, or in relation to those same servants of the people, but at the expense of their principals,—hence, in my view of the matter, judging by that standard, for these same servants, so long as the interest of their principals was equally well provided for, too little could not be done. Not so in the view taken of the matter by the gentlemen in question:—not so in the view taken of the matter in any of those most "*accredited Codes of civilized Europe*," from the virtue and wisdom of which, a portion more or less considerable of theirs had been imbibed. No, Sir: on that subject—as everybody knows and feels—on that subject, everywhere but in the Anglo-American United States, the universal and all-ruling notion, is—that for these same *servants* it is not possible to do too much: and accordingly, the first thing that is done—everywhere done—for them, is—to declare them *masters*. Masters? Yes, and in such sort masters, that the character in which their natural masters, thus converted into servants, ought to be considered, is—that of so many animals of an inferior nature, created by an all-benevolent and all-wise being, for the use of these same self-constituted masters: their masters; or, as the more polished language of English aristocracy sometimes phrases it, their *betters*.

Such then are the beings who, in the first place, together with whatever belongs to them, are to be taken into account, spoken of, and provided for.

In the first place are stationed their peculiar endowments—the power, the wealth, the factitious dignity, with which they are invested: the peculiar endowments, together with the peculiar protection employed in affording a peculiar degree of security to the possessors of these same endowments: the peculiar protection and security, and thence the peculiar punishments, by the terror of which, all hands that might otherwise be tempted to make any motion, by which the enjoyment derived from these endowments, might be lessened, are to be arrested.

Under the late non-constitutional monarchy, the object of the first care, not to say the only

Digitized by Google

care, was the providing this security for the monarch and his particular connexions.

Under the existing constitutional monarchy, the objects of gentlemen's first care, is—the power of that illustrious class of citizens, of whom they themselves constitute so distinguished a part: the care taken of this object is, in their language, the care taken for "*the liberty of the nation.*" Their next care is, for the power and person of the monarch, who, from the condition of absolute, has by a precedent care been removed into the situation of constitutional, king.

Correspondent, in the eyes of the bespeakers and framers of "the most accredited Codes of cultivated Europe," and consequently in the eyes of the authors of this which is so soon to be numbered among those same accredited Codes,—correspondent to the excellence of the illustrious masters, is the depravity of those inferiors, who, in the character of servants, are placed under their rule: inbred is the refractoriness of those unworthy servants; wilful and perverse the blindness, by which that excellence is concealed from their perception: insolent, obstinate and incessant, the efforts they ever have been and ever will be in the habit of making, in the flagitious endeavour to withdraw their necks from under the too well deserved and altogether necessary yoke. For stopping a propensity thus perverse, what chance can be afforded, by any image less appalling than that of the dance of death, perpetually staring them in the face!

Full of these ideas, sword and axe in hand, gentlemen fall to work accordingly. They begin with killing all those, who, in any view, and in particular in the view of reinstating the king in the defalcated portion of his power, have the audacity to meditate any diminution of *theirs*, to make any "*alteration*," in any of all those things that have been done in their favour.

When these are despatched, the next set to be disposed of, are—all those by whom anything has been done, to the prejudice of the sovereign partnership concern, against the person or authority of the original parties, whose names stand at present but second in the firm. Death, on the one hand, for all those, by whom, towards the restoration of the old authority, anything shall be attempted or conspired to be attempted, in diminution of the new: death, on the other hand, for all those, by whom, for the augmentation of the new authority, or any other purpose, anything shall be attempted or conspired to be attempted, in further diminution of the old.

When, under chapter first of this title, one half of the people whose greatest happiness is gentlemen's object, are disposed of, and under chapter ii. the other half, what will be the number left alive?—For the solution of this question, no very deep skill in arithmetic seems necessary.

For all this riddance, though, if life be worth anything, nothing surely can afford a *justification*, the wisdom of the most accredited Codes of cultivated Europe, at any rate,—leaving out of the case the most celebrated of any of them—the Tuscan,—affords, it must be confessed, but too natural a *cause;* and, not only but too natural a *cause*, but, in so far as, on the part of those, in whose hands the care of the happiness of millions is intrusted, blind imitation affords an excuse, but too good an *excuse*.

True it is, that, for giving security in its several shapes to the whole number of those of whom the community is composed, appointment must be made, of some men in particular, to whom, in various capacities and ranks, this occupation shall, in a more especial manner, be assigned: not less true is it, that nothing could be more palpably absurd and mischievous than such a denial, if to those by whom security is thus afforded to others, that security which is necessary for themselves should, in any shape or in any degree, be denied. But even supposing, what is more easily supposed than proved, that, in the instance of these Trustees, any additional security, over and above what is given to them as principals, is necessary, still it will remain to be shown by any one who thinks he can show it, what use there can be in setting this ultra-security to stand first.

How naturally and frequently does the mischief aimed at by injustice recoil upon itself! how natural and frequent an effect of the *too much* is the *too little!*

When it is in no other character than that of a member of the community, that a public functionary applies for protection against injury,—all affections, all hearts, and all hands, are on his side: when it is in a distinct and privileged character, *many* hands, as well as *many* more hearts, will pretty certainly be against him. Well would it be for the country, whatever it be, if on this occasion instead of *many* one might say *all*. This, however, is unhappily not the case: since, be the distinction ever so absurd and mischievous, and in consequence of it the conduct of the functionary in question ever so unwarrantable, so it is that, in every country, by the laws of which, such distinctions are made, community of sinister interests will have secured to him partisans and supporters in vast multitudes, and interest-begotten prejudices—the prejudices begotten by that same sinister interest—perhaps still more.

So much for theory. Look now, Sir, to experience.

In the Anglo-American United States, no instrument of *ultra security* has place. None whatever. And what is the consequence? that the security enjoyed by the functionaries in question—that the security enjoyed by the community of which they are functionaries—is the less entire? No: but that it is much more so. Take for example the chief. For injury done or intended in any shape to the

Digitized by Google

president of the United States, no greater or other is the punishment provided, than for the like injury, to the man, if there be a man, who blacks his shoes. What is the consequence? is he the less safe? Not to speak of Asia, exists there in all Europe, a monarch by whom anything like equal security is enjoyed? Oh, no: nor ever will or can there be. The monarch is a mark for every madman to shoot at: and not only for every madman, but for every man who, in his own eyes, has reason to regard himself as suffering injury at the hands of the uncontrolled arbiter of his fate. And to what place can the monarch betake himself, without being encompassed by multitudes, to whose minds, notions to that effect may, for aught he can tell, be incessantly present?

Vainly would any one say—Ours is a Monarchy, and in a Monarchy these distinctions, together with a thousand others in the same strain, are indispensably necessary. This necessity, so lightly assumed, how comes it to be known to you? What ground have you assigned, what ground can you assign, for it? Absolutely none:—what experience there is, is all against you: experience for you there is none.

Suppose it were even as you say, what would it prove? only that monarchy is no fit form of government: and that this part of your constitution stands in need of alteration: and certainly not the less for the slaughter which gentlemen have been employing in their endeavours to prevent it. Were they aware—were they not aware—of the importance of the limitation, when, to the field of that legislative wisdom to which theirs disdained not to have regard, they assigned the limits which *Europe* has for its bounds? Be this as it may, had *America*—free and liberalized America—been within their view, and taken for their model,—Sir, you see the consequence. Taking Europe for their model, they violated the Spanish Constitution in its most essential and fundamental articles: they took for their end in view, how erroneous soever may have been their conception of it, the greatest happiness of the ruling few:—of that class of which they themselves are such distinguished ornaments: had they taken for their guide those essential articles of their own Constitution, they would have taken for their end in view the greatest happiness of the greatest number, and no such articles as those with which these two chapters of their Code are filled, would have been found in it.

Sir, it was their own doing—it was their own spontaneous doing—the heaping up all this pile of so much worse than useless punishments. By no article in the Constitutional Code were they compelled to it. By the Code, the *powers* were indeed created and conferred: but as to the *punishments*, if any, which should be employed in the endeavour to give effect to those powers,—on this head nothing can I discover but a blank.

Nor, because accordant with and confirmed by a principle of a democratical character, is there anything in this plan of arrangement,—in this order of insertion—that should prevent it from being pursued in a monarchy: in a monarchy, limited or even absolute: in a word, under any other form of government. For some time to come, it is not by every nation, that so much as the *desire* of living under a democratical government will be entertained: and of those by which it is entertained, it is not by every one that the *faculty*, of giving to any such desire its gratification, will be possessed. But, to no government—democratical, limitedly monarchical, or unlimitedly monarchical—to no government, however extensively and constantly determined in its conduct by regard for the separate and sinister interest of the ruling few and the supremely ruling one, to no government can it naturally be a discordant and unacceptable spectacle, to see the rule of action—at any rate *this* part of it—not only intelligible to all, but satisfactory to all: in no government can it be otherwise than satisfactory to its rulers to see their own personal security standing on its steadiest and surest basis.

Order of insertion is one thing: classification and nomenclature—(for they are scarcely separable) classification and nomenclature, by natural philosophers commonly comprehended under one name *method*, with or without regard to order of precedence, another. Of a *rationale*, formed by the undiscontinued application of the so often mentioned fundamental principle of your constitution, a correspondent method of classification and nomenclature, is a natural, not to say an inseparable, accompaniment and instrument. But, to the gentlemen in question, even without, still more with, this accompaniment, a *rationale* would have been a bridle: and, as I have so often had occasion to say, gentlemen did not want a bridle: no man in their situation does. *Natural* and *rational* are attributes, by which, with incontestible, and even with exclusive propriety, a method thus deduced and accompanied, may assuredly stand designated. This natural and rational method—apply it to the penal code, you will in so doing have gone the greatest part of the way, towards the applying it to the two others. According to the above-mentioned fundamental principle, *offences* is the name given in common to all acts, which, being regarded as productive of a balance on the side of mischief, are taken for the subjects of prohibition and thence of punishment. Mischief is, by the amount of it, a defalcation made from the greatest happiness of the greatest number: and to be real, it must, as above-noticed, consist exclusively either of pain in some determinate shape, or of loss of pleasure in some determinate shape: and in both its forms, or else it will not be prevented in *act*, it must, as above, throughout the whole of the field be opposed while as yet but in *tendency:*

Digitized by Google

opposed, and to a considerable extent by means of punishment.

According to this principle, offences there can be none, but what are offences against individuals:—acts which, in act or in tendency, are productive of mischief, in this or that determinate shape, to individuals: to individuals—meaning rational beings: to which, if it be agreeable to you to add to a certain extent irrational ones, I would with pleasure, so they be sensitive ones, join with you, (as we have begun to do in England,) were it only for the sake of rational ones. To these, I am perfectly ready to add the Almighty Being, the very instant you have shown me that he is susceptible of pain or loss of pleasure through human agency, and at the same time unable to afford sufficient protection and security to himself. So likewise, but always under the same condition, to fictitious entities: such as *religion*, *order*, *good order*, "*political order*," "*public order*," or as many other *orders* as gentlemen please: in short, (but always under the same condition,) to fictitious entities, of any other sort, and in any number, that they please.

In act, or, in a distinctly perceptible and assignable way in tendency, every act, if fit to be, by means of punishment, erected into an *offence*, and thus placed upon the list of punishable offences, must, according to the above principle, be an offence against an individual or individuals:—an act productive of mischief, as above, to an individual or individuals. But, at the time of committing the act, these individuals may either be assignable or unassignable: when unassignable, they may be either comprised or not within a class less extensive than the class composed of the whole community—for instance, a class constituted by professional occupation, or a class constituted by vicinity of residence. And thus you have the three first and all-comprehensive divisions of offences: namely, I. Private offences—offences, the mischief of which applies to assignable individuals: II. Semi-public offences—offences, the mischief of which is in its range confined to such unassignable individuals as are comprehended within a particular class. III. Public offences—offences, the mischief of which extends in tendency to all the individuals, to all without exception or limitation, of whom the whole community is composed. (Note, that in an offence of a semi-public or public character, a private offence will frequently be included.)

Looking now to offences against individuals, you will find them distinguishable into offences against *person*, offences against *reputation*, offences against *property*, and offences against *condition in life*: and if, to any individual, mischief be done in any shape, you will, I believe, Sir, find it comprehendible under one or other of those divisions. Offences against *person*, you will find a convenience in distinguishing into offences injurious to *body*, and offences injurious to *mind*: not that *body* and *mind* are ever seen walking—the one one way, the other the other;—nor that pain or loss of pleasure can affect the body without affecting the mind;—but that in some cases the mischief will have its seat in the body only, from thence affecting the mind; while in others it will have its seat only in the mind. Looking to offences against reputation, you will (I must confess) see in reputation nothing more than a fictitious entity. But the adoption of it was found necessary, for the giving an intelligible and familiar appellation to a class of mischievous acts, which could not otherwise have been distinctly designated: and as this reputation is the reputation of a man, and a man is a real entity, you are not by this denomination put in danger of being sent in chase of clouds or shadows, as in those other cases: and, though of the mischief done to a man's reputation, the seat cannot be elsewhere than either in his body or his mind, nor commonly very distinctly perceptible elsewhere than in his mind,—yet, for the reason just mentioned, you will, I believe, find a convenience in distinguishing it from all other offences, the mischief of which has its seat in the mind.

Looking at offences against *property*,—in property, if all the shapes into which it has been commonly cast are to be comprised, you will see objects, for the declaration or conception of which, you will not find it possible to speak, or even think, without making use of the fictitious entities, which, on this occasion, in such abundant variety, the authors of language have been under the necessity of creating for the purposes of discourse: you will see—not only real entities—things styled *immoveable*, relatively immoveable portions of our ever-moving planet—and those other real entities styled things *moveable*,—but the fictitious entities styled services, and rights of way, and rents, and tolls, and annuities and so forth, without end. But still, by no such fictitious entities, Sir, will you be put in any danger of being led away, from the consideration of the real and only really existing mischief—pain or loss of pleasure, of body or mind, or both—the only really existing mischief, that can be occasioned, or be in a way to be occasioned, to one or more of the really existing and human beings, whose good fortune it is to have you for their representative; and who, in a shape so honourable to you, have a sort of *property* in your *services*, in the very best shape in which it is in your power to render them.

Looking to offences against *condition*, you will find the like necessity, and thence the like justification, for the nominal existence given to *this* fictitious entity: for, though to a man's condition in life you will find that no mischief can be done, by any act, any otherwise than through the medium of his property, or in some shape or other of his reputation, or of both, (for of the shapes in which *property* has place, property in human *service*, dependent in many

Digitized by Google

instances in no small degree on reputation, is one,)—nor then, without producing pain or loss of pleasure, to body or mind, or both,—yet here, as before, you will find, in but too great abundance, acts, the effects of which, may with truth be said to be mischievous to a man in respect of his *condition in life*, but which, at the same time, having or not having their seat in the mind, could not be said to be mischievous to him in respect of *property* in any particular shape, or in respect of *reputation* alone: though perhaps they are so at the same time in respect of reputation, and in respect of property in a variety of shapes: the case being, that, on account of some peculiarities in the nature of the mischief, or in the manner in which it is produced, it requires to be distinguished by a separate denomination from the aggregate stock of the offences comprehended in the before-mentioned denominations.

Take for examples, *conditions genealogical*, such as the pair of correlative conditions belonging to *husband* and *wife;* together with the several others which, springing out of them, constitute the genealogical tree. Add those other conditions, which, without being genealogical, may be styled *domestic*, such as those of *master* and *servant:* add again those other conditions, which, like the former, are not political, and are still of a private nature, but are not necessarily correlative: I mean those composed of *occupations* of all sorts, other than those of *public functionaries* considered as such: add lastly, conditions *political*, all of them corresponding to, and constituted by, so many modes of *servantship*, as towards the community at large, considered in the character of *master:* of these last, the whole aggregate may be divided into *public* and *semi-public*, as in the case of *offences*.

In all these several cases, the chief value of the condition, in respect of benefit, and in respect of burthen, will be composed of *services:* in so far as the rendering of the services is *obligatory*, the possession of the condition will involve a *right* to the services in question: a sort of *property*, of which those services are the subject-matter: in this case, for example, are the *correlative* conditions above-mentioned: in so far as the rendering of the *services* to which the occupation owes its value is *not* obligatory, the value of it consists mostly of a sort of *chance* for obtaining free services, in exchange for other free services: in this case are the various occupations exercised by workmen and traders of all classes.

In this process, Sir, if your patience has been persevering enough to carry you through with it, you have seen *logic* employed in *classification*, and thereby in *theory:* in payment for this labour, you will now, I hope, have the satisfaction of seeing some good effects producible from it in practice.

In so far as, in a system of penal law, the denominations thus employed, afford, as above, indication of the nature of the mischief, in consideration of which, the acts in question have been placed upon the list of punishable offences; —of the nature of the mischief, and consequently of the existence of mischief in that shape,—in so far as this indication is afforded, every denomination, by which no such indication is afforded, will *mismatch* with them, and, on the part of the acts which it denominates, present a sort of presumptive proof, of want of title to be admitted into the company of the rest. In such a method, every such instructive denomination stands therefore as a sort of security against the admission of any group of acts, in which no determinately mischievous character can be found.

Take away the security, give admittance to acts, by the denominations of which, no such indication is afforded,—put aside the only natural and rational method,—then comes in as above—then comes in, as of course—some unnatural, irrational, and arbitrary one. Then come in, at every turn,—as sinister interest, or interest-begotten prejudice dictates,—acts which, not being productive of mischief to any *such* amount, that the mischief of the least punishment, by which any diminution could be produced in it, would not be still greater,—or even not being productive of mischief to any amount at all,—afford no sufficient warrant for the application of punishment. For the designation of these same innoxious acts,—since, by the supposition, no apt word, expressive of mischief in any shape, as being produced by them is to be found,—the words employed are such as are designative of this or that vague generality to which every man feels himself at liberty to attach whatever interpretation best suits his views: every man, and in particular every man who has it in his power, to give to his own interpretation the desired effect. Of these convenient generalities, Sir, would you see an example? Examples more than one—examples sufficient for illustration —may be seen in the system of classification and designation employed by the Committee. Witness Title I. Offences against *political order:* Title III. Offences against *public order:* Title VII. Offences against *buonas costumbres*, which, I presume, is a translation given to the Latin phrase *bonos mores;* and which, I infer from the use thus made of it, is in Spain become familiar to unlearned ears. In English, *good customs*—the literal translation of the Spanish words taken in their separate sense, would not serve:—offences against *good customs*—would not pass: still less would *good manners*—another of the literal translations of the two Latin words: In a boarding school, yes: but, in a penal Code, offences against *good manners* would not pass. To an English ear, by neither of these phrases would a sufficiently plausible pretence be afforded for *penal visitation:* —to use a recently invented, religiously and hypocritically cruel, rhetorical phrase.

Accordingly, when, for the affording, by political power, a gratification to this or that

Digitized by Google

personal or individual antipathy, a formulary is wanted, the Latin phrase—*bonos mores*, by which the obnoxious act is enveloped in a cloud of convenient mystery,—offers a formulary, the suitableness of which has been proved by experience.

As to the phrase *offences against good customs*, it carries upon the face of it an objection against itself. Because A and B chose to do a thing, why lay hold on C who does not chose to do it, and punish him for not doing it? And so in case of omission or forbearance. What ground can the mere exercise of liberty by one man, or any number of men, afford, for imposing obligation on any other?

Of this, and of every other objection, but that of meaning nothing, and thence anything, —anything which it may suit the purpose of tyranny to make it mean, the word *order* stands altogether clear. Allow to the legislator the unlimited use and application of but this one word, nothing more is wanted to fit him out in the completest manner in the character of a despot, and that despot a tyrannical one. The acts which draw down upon innocent men the vengeance of the most atrocious tyrants upon record, can there have been any one of them that was not an offence against *order*? against the *order*, established by the tyrant by whom the man was punished for them? Tiberius, Nero, Domitian, Commodus, Caracalla, Charles the Ninth of France, Lewis the Fourteenth of France, Philip the Second of your own country and Belgium—Philip the Second, not to come down any lower—in the word *order*, had not they, for punishing every one of those whom it was their pleasure to punish, as good a warrant, as gentlemen have given themselves by the use made of this word in their Code?

By the word *good*, when prefixed, as it sometimes is, to the word *order*, intimation of something like a reference to public opinion seems conveyed. But, not even this little softening would gentlemen vouchsafe to apply to the despotism it proclaims.

Let me not, Sir, be misconceived. What I do *not* mean to say is—that among the acts, to which a title is given by them with the word *order* in it, there are not *any* to which it is fit that the character of punishable offences should be given; on the contrary, there are perhaps not many, to which, if it depended upon me, I myself should not give that character. All I mean to say is—that if an act's being an offence against *order* is admitted as a sufficient warrant for placing it on the list of punishable acts, the consequence will be—that, along with acts affording a fit demand for punishment, others that afford no such demand may in any number be slipt into the list with little difficulty.

By a natural and rational method as above described, not only is a *bar* opposed to acts that are *not* mischievous, but so likewise is a *thread* afforded for the investigation and finding out of such as *are*.

In a method, thus formed by the application which, on each occasion, is made, of one and the same simple principle,—in every such method, by the relation which every offence bears to every other and to the whole catalogue of offences, you are no less naturally led to the discovery of undue omissions, than to that of undue insertions. In a catalogue of offences, in the formation of which no such instrument of indication has been employed, there may be gaps to any amount unfilled: to any extent, modifications, of maleficence, to which no penal bar has been opposed: deficiences ever so numerous and so extensive, and yet no indication of them afforded.

And as it is in regard to offences themselves, so is it in regard to other extensive objects, for the application of which a demand is created by the catalogue of offences. Witness causes of satisfaction for injury, causes of justification, aggravation, extenuation: causes for pardon, total and partial, formal and virtual.

Thus, not only in a direct way, by the application made of it to each particular case, but in an additional way by means of the method to which it gives birth, does the principle of the greatest happiness of the greatest number, cover the whole field of legislation with its salutary influence. By a method deduced from this principle, a bar is in every part opposed to the introduction of arbitrary arrangements in any shape, a thread afforded for the investigation and introduction of suitable ones, and in every part information given of the design pursued throughout the whole, and of the relation which each part bears to every other. By no mode of arrangement, not deduced from that all-vivifying and all-directing principle, can any such satisfaction be afforded. In every part, you see groups of offences, for the insertion of which no reason is visible: in the whole, you see a receptacle, into which, for the purpose of giving to them this disastrous effect, acts of any description—acts the most purely innocent—may with equal propriety, for anything that appears, be inserted.

No, Sir: without a good *method* for your penal Code, no good penal Code can you have: without a *rationale*, deduced from the fundamental principle of your Constitutional Code —greatest happiness of greatest number,—no good method can you have.

Gentlemen saw before them a method, of which the principle of the greatest happiness of the greatest number—the polar star of your and their Constitutional Code—was the object of actual and perpetual observation. Why would not they employ it? The answer is obvious, and but too uncontrovertible: Because it would not suit their purposes.

4. *Example fourth and last.* All Spaniards put under martial law.

In the Preliminary Discourse, (p. xviii.) "th ejurisdiction of the military courts continues," they say, "on their plan, confined to military offences:" that is to say (so they add

Digitized by Google

by way of explanation) "to infraction and transgression of military discipline and *ordenanza*," in English, *order* or *ordinance*, I cannot absolutely take upon me to say which. For a promise, satisfactory enough this promise. But how is it performed? Answer. By placing the civil authorities in subordination to the military: and in particular, by making military men, in so far as it shall please them to come into conflict with non-military men, judges in their own cause.

There, Sir, you see the position. Now for proof.

Turning to Preliminary Title, Chapter xiii. Articles 187, 188, I find as follows—

"Reserved equally (*igualmente*) for the military authority and jurisdiction, in quality of military offences, are the following:—"

"Firstly: acts of disrespect (*los desacatos*) or violence, committed by *any person whatsoever*, against military men who are found" (*que se hallen*) (meaning it is hoped *only at the time of their being occupied*) "in an armed state in military service." Without this limitation in point of time—a limitation which, under this wording, a judge may apply or not apply as he feels disposed—*any person* whatsoever may be punished in a *military manner* by a *military man* for *any act* deemed by him an act of *disrespect* towards a military man.

"Secondly: those" (offences) "which are committed in like manner" (*tambien*) "by *any person whatsoever*, either within the *quarters*, riding-schools, magazines, and other military edifices, or to the damage of any *effects* which are therein kept."

"Thirdly: acts committed by any person whatsoever in aid of a foreign enemy."

By this third clause, compared with Title ii. Chapter i. articles from 252 to 261, a fair sparring match might seem to be set on foot, between judicatories military and civil, on this part of the field. But, as the hands of the civilians (it has been or will be seen) are tied behind them, no mutual bruises need be apprehended.

Now, then, Sir—on any account whatever,—by behaviour ever so bad, or by behaviour ever so meritorious,—suppose a non-military man to have rendered himself obnoxious, to a man, or to a certain body of men, in the military service. Under the second clause, if by any means they can contrive to get him, at any time, within their "*quarters*," (whatever may be their "*quarters*,") or when they are upon a *march*, or in short upon *duty*, anywhere,—what is the injury it will not be in their power, in virtue of this article, to inflict on him, and without possibility of redress?—But no: they need not be at any such trouble. Let him be where he will, they have but to pick a quarrel with him—to bestow on him any such treatment, as may have the effect of drawing from him words of a "*disrespectful*" nature, he is thereby placed at their disposal.

A judge upon the bench—suppose an occasion to present itself, in which it may appear to him matter of duty, to express, in relation to the conduct of any man of the military order, any such sentiment of disapprobation as a judicatory composed of men of that same order shall be pleased to regard as being expressive of *disrespect*: this judge, if he be a *person* (*persona*)—this judge—though he be of the highest order of judges, nay the minister of justice himself,—is he not, Sir, by this article, placed no less absolutely at their mercy than the meanest citizen?

In all these several cases, not only is the judicatory to be military; the punishment is to be so likewise. The association is formed by *igualmente*:—one of the instruments of entanglement, which the genius of confusion, under the guise of the genius of eloquence, has contrived to put into gentlemen's hands.

By this instrument it is—by their *igualmente*—lodged as it is in article 188—by this it is that, ere we can obtain an adequate comprehension of what is done by this same article 188, we are made to go back to article 187: in which article the first word I see is a *tambien*, by which I am sent further back to the two first articles of the same 13th chapter, namely, articles 185 and 186; which same article 186 has nothing to do with the subject, being confined to ecclesiastical persons and ecclesiastical offences: for this same article 185, conceived as it is in general terms, seems to be inserted by way of ornament, the general terms not adding, as far as I can perceive, anything to the mass of the more particular arrangements which follow it.

Of the words which the *also*—*Tambien* (or in like manner) in article 187, serve to introduce,—the following, in so far as my interpretation of them is correct, is a translation as literal as possible. "Reserved to the military authority and jurisdiction is the cognizance and *chastisement* (*castigo*) of the *offences* (*delitos, culpas y faltas*)* which, "contrary to their discipline

* To these words, meant all of them to designate so many species of the genus *offence*,—to these words, to give the equivalent in English words, is not possible. The intention of them seems to be, to designate three degrees of criminality: in general, the highest standing first. But this distinction has nothing to do with the nature of the offence: it takes that offence for the greatest, to which it has been the pleasure of the despot to attach the greatest punishment. This was the distinction established by Napoleon. In the climax established in his penal Code, you have *contravention*, *delit*, *crime*. Of this order, that which is here in view in your proposed Spanish Code seems to be the reverse. By the word *culpas*, I was led to suspect the distinction to have been borrowed from the Roman law. But, though the *ideas* seem so to be in both instances, in one of them the *word* is not. The word *culpas* corresponds indeed to the Roman *culpa*: but the word *delitos* does not correspond to the Roman *dolus*: which word—(a word that, considering its meaning in the ordinary language, namely *deceit*, was miserably ill-chosen by the

Digitized by Google

respectively, military persons commit." In the word *castigo*, may be seen the demand created for the reference thus made from the 188th to this same 187th article: for, thus it appears, that, by this word as inserted in 187, and, by the word *igualmente* in article 188 applied to and ingrafted upon this same article 188,—not only is the judicatory, by which persons not military are in these cases to be tried, appointed to be a military judicatory, but, as I set out with saying, the punishments which they are to suffer, are appointed to be military punishments.

Note that, by being thus subjected to the military authority as exercised by courts martial, the civil Judges of all classes are subjected to the arbitrary power of the monarch. For, in the Constitutional Code, by article 171, number the 8th, to the monarch it belongs to command the army and navy, and to appoint the generals and admirals: under which provision must be understood to be comprehended, (though forgotten to be expressed,) the removal of them, or else I do not understand how the command given to him over them can be exercised:—if not removeable, a commander in chief, when once appointed, will be absolute.

For this subjection of the civil judicatories to the arbitrary power of the King—for this subjection, thus established in an indirect way, through the medium of his necessarily arbitrary authority over the military judicatories, the constitution and the people would not, it is true, be much the worse, if those same civil authorities were, in a direct way, in a state of equally effectual subjection to that same power. But this is not the case. For, by that same article 171, number 4th, it is not by the king alone that the magistrates (*Magistrados* including I suppose judges) of all the civil and criminal tribunals are to be nominated, but by the king at the presentation of the council of State, in the appointment of the members of which, by articles 233, 234, he has no other share than the choice of the number in question out of thrice the number presented to him by the Cortes. Thus as to *appointment:* and as to *removal*, "magistrates and judges" (says article 252, *judges* being now inserted—for thus are your immutable laws drawn up) "magistrates and judges cannot be deprived of their situations, without cause legally proved, and stated in their sentence: nor suspended, unless in consequence of accusation legally instituted."

Whether, for words deemed wanting in respect applied to a soldier, a court martial shall be pleased to flog or beat the Judges of the supreme court of justice erected under Article 259 of the Constitutional Code, or content themselves with imprisoning them,—regard for the constitution will, I make no doubt, suffice for preventing the military Judge from signing, either a sentence of forfeiture, or so much as an order of suspension in their case. But, by any such regard for the constitution, it does not appear to me, how the mischief, if any, from the subjection of the civil judicial authorities to the arbitrary will of the monarch,—through the medium of his courts-martial, as above,—will be very materially diminished.

Was it by design, Sir, was it by inadvertence, that the sort of arrangement you have seen, was proposed by gentlemen for your adoption? In either case, what say *you* to it? In either case, at the elections before the next Cortes but one, what will their constituents say to it?

Nothing of professional or other prejudice—nothing of exaggeration, Sir,—need you fear in me. Knowing something of your non-military judicatories in so far as they are upon the Roman models—knowing something of these and next to nothing of your military ones,—for the present, and until your judicial establishment, and system of judicial procedure, have been put upon a footing very different from that in which I understand them to stand at present,—supposing professional sympathies and antipathies out of the question, I have more confidence in the military than in the non-military ones. Why? Because the military ones have at any rate this distinguishing character in their favour, so at least I take for granted, namely, that by delay, vexation, and factitious expense, they have nothing to gain, while the non-military ones have everything to gain. To real justice,—not only among us, as far as little less than sixty years of pretty close attention has enabled me to judge, but among you, as far as depends either upon the system of procedure or the ordinary dispositions of the judge,—to real justice the citizen has, I should expect to find, a better chance in a military judicatory, than in the highest ordinary judicatory that is not military. If I have

---

lawyer tribe) so far as in their language it means anything, means *criminal consciousness*, their *culpa* meaning *temerity* pure from criminal consciousness: a distinction piteously ill-adapted to the denoting of different classes of misdeeds, it being applicable alike to all classes. In gentlemen's proposed Code, the first chapter, consisting of one article, has for its title, *De los delitos y culpas:* neither in the title, nor in the body of the article, is there any such word as *faltas:* Of *delito* a definition is given, whereby the conception, so far as discernible, appears to correspond with that of *criminal consciousness:* and in like manner *culpa* with *temerity*. To these definitions, such as they are, no reference is made either in the articles here in question, namely, 185, 186, 187, 188, or in any other of the articles in which the words are employed:—words to which meanings are attributed, so different from any that any man can have found attached to them in ordinary discourse. In relation to the first article, the supposition thus proceeded upon, is—that every man carries it at all times in his head. In the instance of the five honourable draughtsmen themselves, or any one of them, can it, Sir, have been a true one?

In articles 189, 190, being the remaining ones of this chapter, I find not only the word *faltas* dropt, but also the word *culpas*. Was this by design, or by inadvertence?

Digitized by Google

not been misinformed, in the case of offences of an insurrectionary nature, leaving or not leaving the cognizance of them to be shared by the non-military judicatories, you have, by a recent decree, given the cognizance of them to judicatories of a military cast:—to judicatories, in which, whether the judges be or be not of the military profession, (for I know not which is the case,) the mode of procedure is at any rate military. To me this information, taken according to such conception as I was in a way to form in relation to it, was I confess not unsatisfactory. Now, said I to myself, there seems a probability of a decision: till now there has been no chance. Of this conception, right or wrong, my observations on Judge Hermosa's panegyric on judicial forms and delays, may help to show the grounds.

In the present state of civil judicature,—even to give to military men the cognizance of disputes, on whatever subject, between non-military men and military men, might for aught I can say be an improvement. But, so long as there are judicatures not military, to which the cognizance of causes of any kind continues to be intrusted,—to think of intrusting to military judicatures the cognizance of causes arising out of disputes between non-military men on the one side and military on the other, this is what I must leave to the gentlemen in question, and to the construction put by them upon the Articles relative to the greatest happiness of the greatest number, if the remembrance of it has not dropt altogether out of their minds.

Among the sources of "*controverted points*," this topic relative to judicatories of exception, as you may remember, we have found reckoned: but no ground do I, on this occasion, find for any such supposition, as that the question whether the civil authority should be subject to the military, or the military to the civil, was of the number of these same controverted points. Unanimous, as far as appears, has been the opinion, by which the civil authority is placed, as above, in subjection to the military: the opinion unanimous, and the propriety of it too plainly manifest to stand in any need of support from *reasons*.

Sir, this is going even beyond *us*. Even in our government, military as, under our "best of kings," it is become, non-military men have not yet been delivered up to military judicatories. A servant of the king gives orders for killing us, and we are killed: but should a military man, by whom, without provocation we have been killed, be called to account for it, it would be in some ordinary and non-military judicatory that the account would be rendered, and to some non-military functionary or functionaries that the giving him impunity would be consigned: to the king's attorney-general, by means of an instrument called a *noli prosequi* or a *nolle prosequi*; to the chancellor with the king's signature, by means of an express pardon, or (what is more commodious) to the judge, by whom the man is tried, by means of a virtual pardon, manufactured out of a quibble:—out of some recondite rule of evidence, or other rule of procedure, which, if it has not yet been made, can at any time be made for the purpose: just as penal law to any extent is, in the name of *common law*, made, every day, by this or that dependent creature of the king in the situation of judge, without putting the legislature to the trouble.

We have priests, to order unarmed and unoffending men, with women and children, to be killed, and ministers with kings at their backs to reward them for so doing: we have posts, by the receipt of which men are entitled to receive sinecures of thousands a-year for such services.

All this may be done, and is done. But what with us remains as yet to be done is—to subject men not military, for offences not military, to be tried, without any such formality as that of jury trial, by a court-martial composed of military officers. Yes, Sir: as yet,—though I cannot take upon me to promise how long it will continue so,—as yet for an offence not military, be it what it may,—and be the individual specially injured, if there be one, who he may,—a military man, be he who he may, may be tried, and is tried, by a judicatory not military: no non-military man is, for any offence, be it what it may, tried by a military judicatory.

Though you must have quitted Paris,—taking for granted that you have given directions for the transmission of my letters,—not having been forbidden, I give them and shall continue to give them the same direction as before.

One observation or two more, before I quit the subject of *method* altogether.

In different places of the proposed Code, I see a number of articles, encumbered, each of them, with a clause, by which, where the offender is a public functionary, an *ultrà* punishment is added. Witness Articles 202, 203, 204, 206, 207, 213, 214: and in short such seems to be the method pursued throughout: also a separate clause to the like effect applying to ecclesiastics; as if an ecclesiastic, as such, were not a *public* "*functionary*." But perhaps that title was regarded as not belonging to *Monks* or *Sinecurists*: and, in the apprehensions in which the punishments originated, foreign ecclesiastics, not beneficed in Spain, would naturally be included.

Various are the inconveniences resulting from this practice:—by it, the conception and memory, of individuals at large, is burthened with matter with which they have no concern: the bulk of the whole receives a useless increase: and, by a want of uniformity and correctness in the mode of expression, imperfections, too various to be here brought to view, are liable to be produced.

In another part of this same Code, I see a compartment, by the consistent and comprehensive use of which the inconvenience might at any rate have been lessened. I mean—in Part 1, Title vi., containing, in 12 chapters, Ar-

Digitized by Google

ticles 76, namely, from 493 to 528. It is headed —"*Of Offences of Public Functionaries in the exercise of their duties.*" Offences, namely, *delitos y culpas : faltas* being, on this occasion, as on the one above noticed, omitted. Here then is a place, into which the matter relative to public functionaries, as above, should naturally have had admission: at any rate, supposing the words "*in the exercise of their duties,*" omitted: as they might have been without inconvenience. Unhappily, there is no reference from either of these places to the other: the consequence is—that,—ere he can be assured of his having information of the whole of the burthen, for ignorance of which, or any part of it, he is exposed to be punished, in many perhaps most instances by loss of office,—a public functionary must have hunted through the whole Code.

By the title thus given to that division of the Code, is not a presumption, Sir, afforded, that, by the matter of it, information, in some shape or other, was meant to be given, to all the several individuals so denominated, of the whole mass of the obligations respectively imposed upon them? For, unless it be in proportion as such information is possessed, how is it that, by the community at large, the benefit, expected from the fulfilment of these same obligations, can be received? the afflictive punishments, appointed in proportion to non-fulfilment, be avoided?

But, if so, how happens it, that no reference is there made, to so many other articles, in which other obligations not less serious are imposed upon the same persons? Thus faint are the traces, which in that part the proposed penal Code affords, of any regard for the two characteristic and fundamental articles of the Constitutional Code.

To confront with the method thus exemplified,—allow me, Sir, to submit to you the two short rules, by which the disposition of the matter, in the whole body of the law, has been governed,—in a Code, in the penning of which, that all-illuminating principle has never been for a moment out of sight.

Rule 1. Make known to every man what belongs to him.

Rule 2. Burthen no man with anything that does *not* belong to him.

Would it be agreeable to you, Sir, to see them both in a nutshell? Behold them then in a Latin one. Rule 1, *Suum cuique:* Rule 2, *non suum nulli.*

1. Make known to every man what it belongs to him to know. Functionary or non-functionary, no more would I think of making a man suffer, for non-observance of an article of law, unless it had been put into his hands, having first been cleared of all matter in which he had no concern, than I would think of punishing a child, for the not having performed a lesson that had never been set him. "*No more,*" did I say? I should have said—*much less.* Think, Sir, of the difference as to the penal consequences!

A few observations,—showing, on the one hand, the all-embracing application capable of being made of these two short rules, on the other hand, the aspect borne towards them by this work of your illustrious colleagues,—I know not, Sir, how to forbear troubling you with.

Be the Code what it may, if, of the class to which the individual in question belongs mention is made, he is in point of interest either concerned or not concerned in it: if concerned, he is so either in quality of *party burthened,* or in quality of *party favoured,* or in both qualities.

Taking into mind the entire mass of the matter of law, including not only that portion which at the time in question happens to be actually in existence, but also whatsoever other matter there be, a demand for which may eventually come to be found to have place,—in a word, taking into mind the whole body of the law *actual* and *desirable* together,—let a man consider it with reference to the number and description of the persons affected in point of interest by the several distinguishable parts of it, he will find it, according to a principle of division, at once natural and all-comprehensive, divisible into the *general Code,* and the system or assemblage of *particular Codes.*

In the general Code,—saving a few exceptions, which on inspection will be obvious to every eye,—the two opposite and correlative situations of *party benefited* and *party burthened* will be seen to belong alike to every member of the community: in so far as protection is afforded him from mischief at large, and in particular from whatever mischief he stands exposed to suffer from the effects of mischievous acts on the part of other men, the situation a man occupies is that of *party benefited:* in so far as coercion, whether in the shape of restraint or constraint, is imposed upon him,—whether for the purpose of preventing him from being an instrument of mischief, or causing him to be an instrument of good, to other men,—or for any other purposes, all manner of bad purposes included,—the situation he occupies is that of *party burthened.* To the extent therefore of the whole field of the general Code, every man has this double interest in being acquainted with the matter of it: this double cause, for wishing to be acquainted with it. In any particular part of it, according to circumstances, it may be in the one or the other capacity, that the interest he thus has in being acquainted with it is greatest.

In the system of particular Codes, may be seen that one of the two great masses, which in this respect presents the greatest differences.

Persons taxed, &c., *public functionaries,* and *parties to contracts*—by these denominations are brought to view the three most extensive classes of persons, who, in the situation of parties specially burthened, have respectively an interest in the matter of this or that Code belonging to the system of *particular Codes.*

Digitized by Google

I. *Persons taxed*, &c. By this I mean the persons of various classes, that of public functionaries not excepted, on whom, for the benefit of the community at large, or of this or that portion of it, the obligation of rendering *service*, in the shape of payment of *money*, or any other shape, is imposed.

In the particular Codes, by which taxes are imposed, for the use of the community at large, the several persons on whom respectively the contribution in its several shapes is imposed—these, commonly with the addition of others, to whom, on each several occasion, it happens to be in some way or other respectively connected with them,—are *the parties* thus specially *burthened*: the party *benefited* being, as just mentioned, the community at large. Where, instead of the community at large, the party benefited is either a particular class, or a particular individual,—his description receives the changes thus indicated.

To impose a tax, &c., is to impose the obligation of rendering to a party of this or that description as above, *service* in this or that shape: and of *service*, the simplest and most comprehensive shape is that which consists in the transfer of *money*.

In this one group will be comprehended, it is evident, a numerous and ever variable multitude of particular Codes, in each of which, in the character of party burthened, a class more or less numerous of individuals will find itself interested: and, in the instance of each individual, there will be an assemblage of Codes, more or less numerous, and ever variable, in which he will find himself to have an interest.

II. *Public Functionaries*. In a particular Code, in which anything is ordained that bears upon the situation of a public functionary, or a class of public functionaries, as such,—the functionary, in respect of any obligations imposed upon him, is the party *specially burthened*: if, in return for the services expected at his hands, the matter of reward in any shape is placed within his reach, he is in so far a party *specially favoured*. If, to enable him to fulfil any *obligation* imposed upon him, or in a word any service expected at his hands, *power* in any shape is conferred on him,—he is, in that character also, a party specially *favoured*. In respect of the reward, he may be said to be not only specially *favoured*, but moreover specially *benefited*: not so in the case of the power, if considered as charged with the obligation, and not accompanied with the reward. But note, that in many shapes, in many eyes, the power, though not accompanied with any distinct reward, and notwithstanding every obligation it is charged with, has the effect of reward.

Unless it be in the case of a monarchy,—concomitant to power in every shape, is, or is supposed to be, obligation in the correspondent shape—obligation to direct the exercise of the power to the rendering of the services, by which the function is characterized.

III. *Persons engaged in contracts*. In the case of a contract, the same person has place in the two opposite and correspondent characters: namely, that of party benefited as well as favoured, and that of party burthened. In the benefit expected from it, each party sees the *inducement*, by which he was led to take upon himself the burthen: and, unless in his eyes the benefit from the transaction had at the time been greater than the burthen, he would not have engaged in it.

Of the several *conditions in life*, the two most important and most extensively entered into—namely, that of *husband and wife*, and that of *master and servant*, are respectively the result of a correspondent contract. In the case of father and child, the two opposite and correspondent conditions,—though not constituted by a contract, to which the persons so related were both of them parties,—derive their existence from contract, namely that to which the two parents were parties, and in which the child was eventually among the subject-matters of it.

That on the one hand the burthen upon the conception and the memory, on the other hand the burthen upon the purse, may be as endurable as possible, in the giving expression to this matter of the body of the law, repetition will of course be to be avoided as much as possible. If—in every particular Code headed by the name of the class it belongs to, not only the whole of the matter in respect of which a man belonging to that class is party benefited, but the whole of the matter in which he is party burthened, were inserted at length,—no small portion would thus be to be printed twice over: and the burthen, as well upon the purse as upon the conception and the memory, would, in a proportion more or less considerable, be increased. In the instance of every particular class of persons,—in the Code, the matter of which belongs to that class, and on that account will require to be denominated from it,—in respect of some part of that matter, the individuals belonging to that class will be parties specially *benefited*, or at any rate parties specially *favoured*; in respect of other parts, parties *bound*. In whichever of the two characters a person is concerned, it is alike requisite, that information of the concern he has in it should be in his hand. In the Code denominated from the class to which he belongs, all such information must accordingly in some shape or other be contained: but, in that same Code, what part shall be inserted at length, what part no otherwise than by reference to the Code or Codes, denominated from this or that other class concerned in that same matter in a manner which is correspondent and opposite,—will depend upon particular convenience, as indicated by particular circumstances. Note on this occasion, that by one and the same group of legislative arrangements by which the man of but *one* class is a party burthened, men of *divers* other classes may be parties benefited: and so *vice versâ*.

Digitized by Google

In the case of a member of the *judicial establishment*, may be seen that of a public functionary, who, together with the power, being charged with the obligation of contributing, according to the nature and extent of his jurisdiction, to the giving execution and effect to the whole body of the law, or to this or that part of it, is therefore,—not only in a general way in his quality of member of the community, at once *party benefited* and *party bound* with relation to the whole matter of the general Code,—but likewise, with relation to the whole of the matter of the system of particular Codes, specially *favoured* in respect of the above-mentioned power, and specially *burthened*: burthened with the obligation of eventually giving execution and effect to it, and to that end, of lodging and keeping in his mind the import of it.

Only in proportion as it is known, can the law or any part of it, be an instrument of good in any shape. But,—with every degree of compression that can be given to it,—the difficulty, of giving to the knowledge of it this necessary extent, cannot be inconsiderable. Any expedient, which promises to contribute in any degree to the lessening of this difficulty —ought it, Sir, to be left unemployed?—Of some of these expedients, I proceed to submit to you, Sir, a faint sketch.

I. Laws of *constant* concernment—laws of *incidental* and *contingent* concernment:—by the distinction thus expressed, one instrument for the diminution of the burthen upon the conception and the memory, may be brought to view. In the case of a law of *incidental* concernment,—if the case be such, that the demand for attention to it will not be presented, till after a certain state of things has taken place,—a state of things, notice of which *cannot fail* of being received by the parties, who, whether it be in the character of party burthened or party benefited, are parties concerned,—a consequence is—that of this part of the Code, be it the general, be it any particular one, the expression at length need *not* be given in every edition of this same Code: by indication, given in the way of reference, to a more enlarged edition in which the part in question is given at length, the purpose of conducting the mind to it will be answered: and, in the case of no individual, with reference to whom this state of things never does take place, will the Code, out of which the matter in question is omitted, be incomplete.

First instrument of reduction or compression as above—distinction between articles of *constant* concernment and articles of *incidental* and contingent concernment. This distinction applies alike to the general Codes and to the system of particular Codes.

II. Second instrument of reduction or compression—distinction between *main text*, *expository matter*, and *rationale*.* On my plan, the matter of each of the three Codes—penal, civil, and constitutional, is divided into general titles and particular titles:—or into particular titles and general titles: for it is not as yet altogether clear, which of the two orders will in each instance be most convenient. Take, for example, the penal Code. In the particular titles, the main text is composed principally of the denominations given to the several offences: denominations, followed each of them by a definition, and coupled with intimation given, of the punishments respectively attached to those offences. In some cases to the name of a genus of offence thus marked out, may be added—added in form,—other more particular denominations, declared to be indicative of so many species of acts contained under that genus. Be this as it may, by every distinguishable portion of the expository matter, designation will be made, of some particular species of act contained within that same *genus*: made by the very nature of the case, whether mentioned or not mentioned as being made.

Compared with the bulk of the whole, the bulk of the main text will lie in a very narrow compass. The particulars, contained in the expository matter, are employed in giving clearness and precision to the import of the name of the offence, and of the definition given of it. When, of this expository matter, a conception has once been obtained,—it will thenceforward, with more or less clearness, correctness, or completeness, be suggested by the name alone; still more effectually by the name with the definition added to it: and, the more completely this effect is produced, the more effectually will the main text answer the intended purpose, when the expository matter is detached from it.

So likewise as to the *rationale*. The use of the definition is—to distinguish the offence defined, from all objects with which it is likely to be confounded: in the first place, from all acts to which punishment is not meant to be attached in *any* shape—in the next place, from acts, in respect of which, for the purpose of punishment or any other purposes, arrangements in any way different are meant to be made. Take, for example the offence of *theft*. Neither in the Roman nor in the English law, —neither by any definition that has ever been given either in the way of statute law, or in the way of common law,—nor by any lights, afforded by reports of judicial decisions,—has any clear line been ever drawn, between a non-criminal taking, namely, on the supposition of *right* to do so, on the one hand,—and the taking by means of consent obtained by *fraud*, on the other. The expository matter will, in its own way, contribute to fix in the memory, when once let in by the conception, the idea of the true character of the offence: the rationale will, in another way, contribute to the same desirable end. But, moreover conversely, the effect of the association being mutual,—proportioned to the clearness, correctness, and

* See the Constitutional Code, in vol. ix. of this collection.—*Ed.*

Digitized by Google

completeness, of the view which these instruments of elucidation have given of the object, as designated by its denomination and its definition,—will be the facility, with which, upon every occasion, the import, of these same instruments respectively, will be recalled: recalled, by the denomination and definition together, or even by the denomination alone.

In this way, Sir, in my penal Code, you see three distinguishable parts, contained under the head of each genus of offence: the second and third,—each in its own way, throwing light upon the first, and thus forming a useful accompaniment to it,—but each of them capable of being detached from it. On this plan, in so far as there may be any use in separating them, nothing can be more easy: every printer will be competent to it. If there *be* any such use, it will be in the way of lessening the burthen: the burthen, whether it be on the conception, the memory, the pocket, or the shelf: not to speak of the pocket in the literal sense.

Of both *expository matter* and *rationale*, particular samples may be seen, in the first of those works of mine that have been edited in French by M. Dumont.* You will assuredly neither expect nor wish, Sir, to see anything of either of them here. What the relation may be, between what is said there on the subject and what I have said here, I know not. Neither eyes nor time will admit of my looking at it.

Other instruments of compression I employ: But, by any attempt to convey any conception of them here, I know not what further addition might be required, to a load which perhaps may already have been put aside as unsupportable.

You see already, that either the main text alone, or the main text with the expository matter, may be considered as an *abridgment* of the whole. Here then you see a sort of abridgment of the legislator's work: an abridgment made by the legislator himself. On this occasion, permit me, Sir, to observe, that the legislator's is the only hand, by which an abridgment can be made, on which any dependence can be placed with safety—can be placed without imprudence. Let the work at large be ever so replete with imperfections,—an abridgment, in which those imperfections were removed, would, to him who trusted to it, be no less mischievous, than one, in which the multitude of the imperfections had in the same proportion received increase. How can it be otherwise? In case of litigation,—not by the abridgment good or bad—not by the abridgment, but by the authentic work at large,—will the lot of the parties litigant be determined.

Thus in case of statute law. As to common law—in this case, an abridgment is an imagination of an imagination.

In either case, in what character is an abridgment capable of being of use? Only, Sir, in that of an *index:* an index, for giving information, of the places in which may be found those portions of discourse, by reference to which the fate of the cause, and thence of the parties, will be determined: an *index*—differing no otherwise, from the sort of implement more usually designated by this name, than by being more ample, and cast into a logical form instead of the alphabetical.

In the rules *suum cuique* and *non suum nulli* is included, you see, Sir, this instruction to the legislator.—So order matters, that, in addition to the general Code in which *all* have a concern, each one shall have—have actually in his hands—every particular Code in which *he* has any concern: and *that* in a state separate from every particular Code in which he has *not* any concern.

The all-comprehensive survey, thus and for this purpose taken of the field of legislation—the division thereupon made of the rule of action into general Code and system of particular Codes—was there no use in it, Sir? Was it mere theory? had it no bearing upon practice? no influence on the greatest happiness of the greatest number? To the gentlemen in question—was it unknown, Sir? No, Sir, it was not, it could not be, unknown to them: it stared them in the face: it stared so strongly that they shut their eyes against it. It came from the intrusive foreigner: it was not of *their* starting: it would have given them too much trouble:—in a word, it suited not their purpose. It was put aside accordingly. There, Sir, you see the cause.—No such thing was to be found in any of the most accredited Codes:—there, Sir, you see a pretence.

Such is the omission. Now for one little example of the consequences.

On my plan, under the head of *Husband and Wife*, in a particular Code so denominated, a document, in which all benefits and all burthens, attached by law to those two correlative conditions, are set forth, would be found. If it depended upon me,—on entrance into that contract, into the hand of every man and that of every woman, should a copy of it be placed, or no such contract should be entered into: if some time before the ceremony, so much the better. They would then enter into the engagement with their eyes open, and not as at present, blindfold. An instrument of this sort—would it be less instructive, less useful than a ring? But rings were made before Codes were made: before Codes were made, or the press for the printing of them invented. But moreover, from the relations between husband and wife come eventually those between father and child: of the particular Code intituled *Law of father and child*, notice would accordingly be given in the particular Code intituled *Law of husband and wife:* with or without intimation, more or less particular, of the details.

In the Committee's proposed Code, arrangements relative to this pair of correlative conditions, have place. Under what head? Under that of "Offences against *bonas costum-*

* See in this collection, vol. i. p. 164.

Digitized by Google

bres:" Articles 559, 560, 561, 562: offences against *good morals* or *good customs*. But, on or before entrance into this engagement,—what man, what woman, should this same Code pass, would think of buying a copy of it, and reading it? Even if they did set about reading it, would not they, to save trouble, be apt to glance over the titles? Glancing over the titles, would they see any one of them, in which either the word *husband* or the word *wife* is mentioned? Not seeing any such title, but seeing the title *offences against buenas costumbres*, would they be led by it, to expect to find in it anything that they would have more concern in after their marriage than they had before?

One little example more.—Knowing that, in the Code in question, there is a compartment, in the title of which *functionaries* in general are mentioned,—every man, to whom that denomination belongs, will of course understand, that in some way or other he can scarcely fail to have a personal interest, in making himself acquainted with the contents.

But, from any such title as that of *offences against the liberty of the nation*, what is there that should lead him to make any such inference?

In the Committee's proposed Code, I see a division thus intituled—" Of the offences," (*delitos y culpas*,) " of public functionaries in the exercise of their offices:"—Chapters xii.; pages 23, from 132 to 155 inclusive; articles 76, from 453 to 528 inclusive. After so much said on the subject under its own name,—who, without notice given, would expect to see anything more about it under any other name? Yet, under other names, more there is in abundance,—and no warning given of it: and, in particular, under that of *offences against the liberty of the nation*, as above.

Whatsoever be the benefits, undertaken to be conferred on a man by any part of the law—whatsoever be the burthens imposed upon him by force of punishment,—do gentlemen know of any means a man has of making himself secure,—secure, either of enjoying the benefit or of escaping from the punishment,—without reference made to the law? Wherefore then did they decline taking the measure necessary for the putting this saving knowledge within every man's power? Wherefore?—but that—either absolutely, or in comparison with some nearer object,—the greatest happiness of the greatest number was, in their eyes, an object of indifference.

Giving to a man this double security—giving to *every* human being that could read it, or hear it read, this double security—giving to the whole body of the law all this efficiency—a service such as this, would it, Sir, be a service without value? This service, the intrusive foreigner would have rendered, and would yet render, to your nation. This service, gentlemen would not themselves render, nor would they suffer him to render it.

They are Spaniards: to them it belongs to be apprized of all those circumstances, affecting in each case the demand for legislation, that are peculiar to Spaniards: to them, yes; to him, not.—Be it so, Sir. But, by him who, having complete knowledge, will not make application of it, or by him who, having but incomplete knowledge, would make application of it to the uttermost of his power—by which of the two, with reference to the purpose, whatever it be, is most service likely to be rendered? On the part of the foreigner, the knowledge of the circumstances peculiar to Spain was wanting: relation being had to Spain, imperfections in any work of his would thence have been inevitable. Admitted. But, whatever would have been these imperfections, could there have been, on the part of the gentlemen in question, any want either of the inclination, or of the power, necessary to the correction of them? Thus stood the matter at the first. But, at present, and in future, whatever wisdom it may be, that, in their instance, composes the fruit of this indispensable local knowledge, it is now visible: It is seen in their proposed Code, and all foreigners, as well as all Spaniards, have it before them.

Two rules you have already, Sir, in a nutshell: permit me to slip into it one other such little pair, and I have done.

Rule 3. *Ideis iisdem, verba eadem:*—or thus—*Eadem natura, eadem nomenclatura.* Of this the converse is—Rule 4. *Ideis diversis, verba diversa:* or thus—*Alia natura, alia nomenclatura.* Change the expression, can any one avoid suspecting at least, that the ideas you meant to convey are changed likewise? Supposing it your intention to convey different ideas, could you take any other means than that of using different words? If you could not, then is the use you have made of different words a certificate of diversity in the ideas; and this certificate is a false one. If these rules be conducive to the ends of language, and the opposite course repugnant to the ends of language, try them, Sir, upon the proposed Code: try them throughout upon that great work, and see what will become of it. Of this I have already submitted to you a few exemplifications.

Thus is it, as I have so often had occasion to observe—thus is it, Sir, that in every page the same unfortunate spectacle is but too visible:—knees bent, before the fascinating art of *Rhetoric:* backs turned, upon her formal, but honest, sister, *Logic*. Good this in poets: but is it so in legislators?

Ideis iisdem, verba eadem; ideis diversis, verba diversa—there, Sir, you see two rules of *expression*, two rules for the expression to be given to the matter of the law. *Suum cuique; non suum nulli*—there you have two rules of *distribution:* two rules, for the distribution to be given, to that same matter, on the possession of which, to so vast an extent, the difference between happiness and misery, in the instance of every human being, depends. Proceeding thus, what *Linnæus* did for natural

Digitized by Google

history—what *Sauvages* did for the nosological branch of medicine,—that will this your troublesome correspondent do, Sir, for legislation, so far as life and faculties suffice. And already, though it were by nothing more than these four short rules, is not some little progress made?

Lawyers, employed by the ruling few, with or without cognizance taken by a supremely ruling one—lawyers, linked with these their employers by a community of sinister interests—such are the men, by whose particular wills, governed by their particular and thence sinister interests, on this as on every other occasion, as far as has depended upon the state of the law, the condition of the millions has been disposed of. But, with the exception of those violences, from which the danger, to every man's person and property is serious and manifest, their own included,—it is the interest of lawyers, that the multitude of offences in all shapes should be at its maximum,—in such sort as that the profit, from defending the injured against the injurer, and the injurer against the injured, shall be so likewise. Thus it is, that, with the above exception, mischief, in whatever shape produced by ignorance of the law, is by professional draughtsmen viewed with delight: and, it being to their high seated employers matter of indifference, hence it is, that we see it left, upon the footing at which it suits the interest of the lawyer class, that it should everlastingly be kept.

LETTER VI.

On the anxiety of the Legislation Committee to keep the door of the Cortes shut, against works coming into competition with their own. Conditions on which Sanctionment is recommended. [*Necessity of the free tone of these Letters.*]

Sir,—Such, with the exception of the words in brackets, was the title of this my sixth letter as announced in the first. Meantime, the matter itself has undergone no small change. Of the anxiety of the gentlemen in question to keep out of the sight of their colleagues, and thence of their constituents, rival productions in general, and in particular your humble servant's actually existing works, and future contingent Codes, you have already heard more than enough. The anxiety on his part not to be so kept out of sight—this is the only anxiety which, in the course of this letter, will give you any further trouble.

Before I take my leave of theirs altogether, I must however, submit to you, in the way of contrast, a short recapitulatory sketch, of the principal objects, to the accomplishment of which, the opposite anxieties may have been observed directing themselves, and the different arrangements, of which the pursuit of the respective objects has been productive.

1. My object being the greatest happiness of the greatest number—the same which, in articles 4 and 13 of your Constitutional Code, stands proclaimed as the all-comprehensive object of that official work, I have on every occasion held it up to view and made application of it.

Gentlemen's object being—what I will leave to themselves, or some one for them, to state,—they have not, on any occasion, as far as I can see, taken any the smallest notice of it.

2. As one means towards that same end, for the purpose of securing the aptitude of the work in relation to it—namely, in so far as depends upon appropriate moral aptitude on the part of the framers of the first draught, and for that purpose to shut the door against all particular and thence sinister local interest, backed with power sufficient to give effect to it,—I make offer of a foreign hand, secured by its position from all sinister interest.

Gentlemen's object being still what I will leave to some one else to name,—and, by that organ of impeccability, to which as far as appears they trust, their minds being, to their own satisfaction, sufficiently secured against all seduction from sinister interest,—their anxiety has, for an ulterior object, the keeping all such troublesome intrusion as effectually excluded as possible.

3. In further pursuit of that same end,—to secure aptitude to the work,—in so far as depends upon the above and the two other branches of appropriate aptitude on the part of the workman or workmen, namely, intellectual aptitude and active talent,—another object of mine, is—so to order matters, that no distinguishable arrangement shall be proposed, that has not for its support a distinguishable and openly expressed *reason* or set of *reasons:* and this security, the hand I offer is accordingly prepared to afford.

Gentlemen's object being still what I must leave to themselves or some one else to name,—their anxiety is—so to order matters, that no arrangement which in your nation is to have the force of law, shall have any one assigned reason for its support: in such sort, that whether there be any reason or reasons for it at all, and if yes what, shall remain for everlasting, a subject of unsatisfiable doubt and boundless conjecture.

4. In further pursuit of that same end,—regarding consistency of design, as highly conducive, not to say necessary, to the attainment of it,—lest, while in one part, the end, whatever it be, is pursued by one course, in another part it be pursued by an indeterminate-

Digitized by Google

nately different course,—my anxiety is—that, throughout the whole field, the groundwork thus laid shall, if possible, be the work of one and the same hand.

Gentlemen's object being still what I must leave to some one else to say in a positive manner,—but, as far as appears to me, from their own declarations, coupled with the nature of their situation, what may be called *mutual accommodation*—division of the whole stock of power and glory, upon the principle of a partition treaty,—their anxiety has been —to secure, and they have secured accordingly, to themselves and one another, this same means of mutual accommodation. And, of the result, and of the influence, which, if this work of theirs should become law, may be expected to be exercised by it on the greatest happiness of the greatest number, samples have already been brought to view, and in greater number than can naturally be welcome.

5. Still, in pursuit of that same end,—taking into consideration, with reference to works of the description in question, the immensity of the demand for appropriate intellectual aptitude and appropriate active talent on the part of the workman, and at the same time the deplorable scantiness of the supply everywhere in conjunction with appropriate moral aptitude in the same breast—yes—everywhere, Spain itself (forgive me, Sir, for saying so) not excepted,—my strongly manifested anxiety has from the first been, and continues to be, to secure to your country, as well as to every other, now and at all times, the greatest obtainable number of works of the above-mentioned description, by hands of the above description, for those to whom it belongs to choose out of: and, towards the fulfilment of this wish, I have laboured with as much energy as ever monopolist employed in his endeavours to secure his monopoly. Witness the second of my letters to Emperor Alexander as published in my "*Papers on Codification.*"

Gentlemen, in their anxiety to keep out of the way the competitor from whose intrusion most trouble seems to have been apprehended, —took the measures, explained in the second of these my letters to yourself, Sir,—being such measures, as promised at least equal success against all similar intruders.

Under these circumstances, despatch would naturally be, in their eyes, no inconsiderable object: and by the principle of the *division of labour*, applied as it appears to have been applied, not only was harmony promoted, but despatch likewise.

But enough now, Sir, of anxieties: prepare yourself, for gladness. Whether, in the honourable breasts in question any such sensation is likely to be produced by the sight of any Code of my drawing, you are in a condition to imagine. In mine, the sight of theirs has been and is a source of real satisfaction.

The case is—in my way of viewing the matter, the tendency of this production of theirs, with reference to me, is—to promote in a variety of ways that intrusive design which is giving you, Sir, so much trouble.

1. It will, to an extent more or less considerable, lay open to my view those local circumstances, in the exclusive knowledge of which, gentlemen's modesty has found a support to their claim of exclusive privilege.

2. It thereby lays before me, as well as before the nation which it is my ambition to serve, a complete map of those parts of the field of law, to which, if to any, the objection derived from foreignership can have any application. Spreading out the map before me, it enables me, on each occasion, to make those references—those clear and exact references—of which you may have been seeing, Sir, so many more examples than it can have been agreeable to any eye in the situation of yours to see.

3. In a word, it lays before me—it lays before the members of the existing Cortes—it lays before their constituents,—it lays before the succeeding Cortes—it lays before the so deeply interested and observant nation, the only existing production, with which any one of those that I have in preparation has as yet to contend. It is not necessary for me, to attempt to affix any precise value to the use which this circumstance may be found to give to it with reference to my intrusive purpose. Suffice it to observe, that the less the value of the production in the eyes of the nation to which it looks for support, the greater will be its value with reference to the purpose of every intrusive rival.

Actual satisfaction at seeing the Code in its *candidate* state is one thing: eventual satisfaction at seeing it in an *elected* state is another. By the title of this Letter, as announced in my first, you may have been prepared, Sir, for a certain eventual satisfaction on my part, even in the event of my seeing the sanction of law given to the proposed Code in the exact state, in which it has been the subject of all the freedom you have seen taken with it. Of this same satisfaction you may at the same time have observed, that it is not altogether absolute and unconditional, but limited by conditions more than one. At that time, conditions more than one I had accordingly in view. But, on a nearer inspection, that my chance for satisfaction may be as favourable as possible, I have settled with myself to put aside these same conditions, all but one. Sanction then I say this proposed Code—Yes, and as soon as may be: if, within the time, the imperfections, which you yourself, Sir, have had the frankness to lay your finger upon, can, any or all of them, be removed, so much the better; not to speak of any of those supposed ones, which my own presumption represents itself as having given indication of. But, if nothing of this can be done, sanction it even as it stands at present.

Now then for the condition: it is neither more nor less than this—instead of the more

Digitized by Google

commonly looked for everlasting duration, give it but a temporary, and that a short one. When experience,—and a long one need not be insisted upon,—has demonstrated its usefulness, then will be the time for giving to it that eternity, which will be so much more to the taste of its honourable authors.

Considering the terms, in which your letter speaks of this proposed Code,—were I even to indulge a serious expectation of seeing this condition annexed to the passing of it, I hope, Sir, you would not find it altogether an immoderate one. Such is the presumptiveness of my hope, it extends even to this—namely, that, in the endeavour to cause this condition to be annexed, your influence, which fame represents to me as so powerful, will not be withholden.

That, on the part of the gentlemen in question, any willing consent to this effect will be given, is, I must confess, rather too much for my hope. Feeling, each of them, on his own forehead, seeing in virtue of the partition treaty, each of them on that of every other, those two most instructive organs, which there has been such frequent occasion to touch upon —the organs of impeccability and infallibility, —they will feel themselves under an incapacity of conceiving, how, in any such troublesome limitation, there can be any use. Alas! The closer I look into this matter, the less sanguine is my hope. Turning to their "most accredited Codes," whose wisdom they have made theirs, I have found no precedent on which my hope can anchor itself. To the best of my recollection, on the foreheads of all persons concerned in the manufacturing of all these several Codes, servants as well as masters, the two organs have been alike prominent.

Whither then shall this same hope of mine betake itself? The answer is not difficult: to United Anglo-America, resting-place as well as cradle of all honest political hope. An example then I have already, in that rashly begotten, and happily expired, act of Congress, to which I have already had occasion, Sir, to solicit your attention, and to which, without fear of contradiction from *that* Ultramaria, I gave, or might have given, the denomination of the *liberticide law*. Here sits my hope quietly for the first moment. Oh but, (cries a voice,) that state is a democracy: ours is a monarchy: it is only in a monarchy that any such organs are seen. The illustrious *Gall*, by whom the organs of this class were first discovered,—did not the empire of Austria give him birth? Under the notion of promoting the greatest happiness of the greatest number, do not the rulers in that American seat of anarchy, make the condition of that same greatest number, depend upon the will of that greatest number? Can anything be more absurd? As for us, we make the condition of the greatest number—Oh, yes—and of all the rest—depend upon the will of one individual—one single individual, *without* whom nothing can be done, and *by* whom everything can be done: everything, so it be with that proper and necessary assistance, for the purchase of which it is that we have placed at his disposal the good things of this wicked world in all requisite abundance. In some countries there might be danger in such an arrangement: but in ours there is none. In some countries, all men's first care is for themselves, and their own particular connexions. But, in our country, when a man gets into an office,—if it be of a certain height, he forgets he has a self belonging to him: King and country are the sole objects of his care.

Well, Sir, be this as it may, I will not deliver myself up absolutely to despair. One other precedent I have in store. I should have said a mine of precedents: for such it is and a most abundant one. It is the practice of the government under which I write. Rotten as it is,—and hastening as it appears to me to be, to a change which cannot be for the worse,—sacrificing as it does on all points of contrariety the greatest happiness of the greatest number to the supposed happiness of the ruling few and the supremely ruling one, —still, on points on which no such contrariety has place, examples of prudence, the fruit of long experience, are here and there to be found: and this is not the least conspicuous nor the least incontestable. *Codes*, it is true, we have none: the very word is horrible to us. *Statutes*, however, we have every year, and every year in a heap such as would outweigh a hundred of your Codes. No, Sir: not a year passes, but amongst these statutes there are—I fear to say how many—for I have neither time nor eyes to count them—but I can venture to say multitudes, of each of which the duration is limited to a time certain, and that a short one. Witness even the *Six Acts*, which, for your information, I must call by the aggregate name of the *liberticide* acts, but which among us, are sufficiently known by the more concise and merely numerical name: Acts, which had the same object as that American Act, which by its death has been rendered the pride of that happy people, of which, during its life, it was the shame.

Even the statute, on which the standing army depends for its continuance—that standing army, by the dissolution of which the government would, if its own fears are just, be dissolved—even this statute (it is called *the Mutiny Act*,) lives but from one year to another. Trust not to me, Sir, for this: ask anybody—ask our Minister at your Court, whoever he may happen to be. Not that, in the possession of any such expatriated court favourite, you will be likely to find any such dry and bulky matter as the matter of our Statutes at large. But, that which everybody knows, you will find *him* knowing: and for this purpose it will suffice.

Here, then, Sir,—under a government, of the determination of which, on every point of con-

Digitized by Google

flict, to sacrifice the greatest happiness of the greatest number to that of the ruling few, you cannot entertain a doubt—under this government, the life of which is in its own persuasion, no less inseparably attached to that of a particular law, than that of Meleager was to the log which somebody threw into the fire—under this government you see no such fear has place, as that of mischief to itself, from thus rendering the law capable of going out at the end of a twelvemonth. What say they then? Were it only for appearance sake, cannot gentlemen be prevailed upon to assign to this Code some experimental duration? If yes, say then one year, say two years: and, in either case, from thence, as is the custom with us, to the end of the then next Cortes.

You see, Sir, how mistaken the notion would be—that, between this exertion of self-diffidence and prudence, and the practice of depredation, to an amount so far above anything that in your country men can have any conception of, there could be anything of practical inconsistency. Those who require such comfort, let this comfort them.

But, (methinks, Sir, I hear you saying to me,) this contentment on your part, is it in any degree consistent, with the opinion, of which such copious intimation is given in your preceding Letters?

Sir, I will tell you simply how that matter stands. Good and evil may be considered in an absolute point of view, or in a comparative: compared with a greater, a lesser evil is good. No mass of law so bad, that I would not vote for it, on condition of its taking the place of a worse.

Of the state, in which the penal branch of law exists at present in your country, gentlemen have, in their preface,—though but in the way of allusion, as to a state of things out of dispute,—given that account, to which, in the second of these Letters, I had occasion to allude. All circumstances considered, I can scarcely entertain a doubt, but that, in comparison with such a Code, even that, which I have been so tediously commenting upon, would be a blessing.

From yourself, moreover, I learn, Sir, that —to an extent, the precise limits of which are not known to me, but which appears not to be a narrow one—the existing atrocities alluded to fail of receiving execution and effect. Here then is my hope and my consolation. Of the *existing* Code, the articles which in their view are unfit to receive execution, have, to a considerable degree, actually failed of receiving it. An inference I indulge in is this: of the *projected* Code, the articles which, in my view, are unfit to receive execution, would, to an amount more or less considerable, in the event of its becoming law, be in that same case.

In a certain state of the law, the existence of the human species depends upon the degree of execution given to the law: or, at any rate, the more exact the execution, the greater is the happiness of the greatest number in the community in question. In this state is the law, for example, in the Anglo-American United States: notwithstanding the remnant of that poisonous matter, which was originally imported from the Augean stable on the other side of the water; and which the lawyers, who fatten upon it, still keep, on the penal and civil part of the field, unexpelled.

In another state of the law, the existence of the species depends upon the non-execution of the law, and the consequent impotence of the ruling tribe: of the ruling few, under the supremely ruling one. In this state, for example, is the law, in a country which it would be superfluous to name. Carried into full execution and effect, libel law would of itself suffice for the extirpation of the inhabitants: for the conversion of all dwellings into jails, of all the inhabitants into jailors or prisoners; and, —by giving this destination, to all those on whose productive labour, themselves and their fellow-countrymen depend for subsistence,—substituting starvation to existence.

In your country, though utterers and readers of libels, all newspapers without exception included, are not so numerous as in the one just alluded to, laws, I cannot doubt, might be found, by the aggregate virtue of which, if fully executed, an equally complete clearance would be effected.

Wherever Roman law has reigned,—in addition to a functionary, by whom, under his own name, power of pardoning, applicable to offences in general, has been avowedly possessed and exercised,—other functionaries there are, by whom, without the name, that same power has been possessed and exercised. Where the judicatories have not possessed the power of giving execution to penal laws of their own motion,—nor without being called upon by a servant of the Monarch in the situation of prosecutor-general,—the whole of this covertly pardoning power has had *his* single breast for the seat of it. In so far as this has been exercisable by them at their own motion, this mode of proceeding has been styled the *inquisitorial*; and, within their several ranges, the power of the prosecutor-general has had the judges of the several judicatories for sharers in it. According to *Banniza*, thus, for example, if my recollection does not deceive me, stood the matter in the Austrian dominions; according to *Boehmer*, in the Prussian. I should expect to find the case standing on much the same footing among you: not to speak of the rest of Europe.

With us, the matter stands as yet upon not quite so bad a footing: the power of giving effect to the laws on which personal security depends is not made an object of monopoly: our Monarch being God upon earth, as we are all of us taught from Blackstone, our lawyers, as far as depends upon them, have, it is true, given to him the power of putting to death every man it would be agreeable to him to put

Digitized by Google

to death, on condition of finding one hand to do the job, and another, by the counter-signature of a pardon, to concur in giving impunity to it. But, commodious as upon this statement it may seem, this mode of proceeding,—signatures and counter-signatures being visible things,—has not yet become a customary one: modes not less effective but less conspicuous have hitherto obtained the preference: discriminating slaughter has not yet been visibly added to indiscriminate. Matters, however, are in preparation for it. Recent progress has been made. The last session but one or two produced a statute, by which the right of certain relatives to prosecute for the murder of the correlative without permission from the Monarch,—in which case, on conviction, a pardon from him was without effect,—was abrogated. Since then, the life of every man in the kingdom hangs by a thread, which a word from the king may cut at any time. Mine, Sir, remaining as you see still uncut, what gratitude do I not owe!

I beg your pardon, Sir—I have been digressing. What belongs to your case is this. Under a government, which has for its real object the supposed happiness of the ruling few through the sacrifice of the real happiness of the subject many,—the system of law being to such a degree bad, that the execution of it if complete would suffice for the extirpation of the species,—in such a state of things, if the species remains in part unextirpated, it must be indebted for its existence to some arbitrary power, by which the purposes proposed by the makers of the law are prevented from being carried into effect. While your judicial establishment, and your system of judicial procedure, remain upon their present footing, or upon any footing standing on a ground of Rome-bred law,—the otherwise natural effects, of codes drawn from that source—of codes such as the one I have before me—will, in arbitrary powers such as those I have been speaking of, find a palliative. And on this palliative rests the confidence I entertain, of seeing your country still inhabited, even supposing the code in question to pass in its own words unchanged.

You are now, Sir, in a condition to judge, whether, on the satisfaction above declared, in what degree soever well or ill grounded, inconsistency can be charged.

Though, beyond the above-mentioned temporariness, lest you should be asking too much, I should be sorry to see you asking for anything in the character of a *condition*,—a few other things there are, which I will venture to mention in the character of simple propositions.

1. One is—that of an Article, declaring, that for giving increase to the quantity of punishment appointed in any case by the new Code, no recourse shall be had to any at present existing portion of statute law: any more than for applying punishment, in any shape or degree, to any act to which this same new Code has not applied punishment. Something in this view I should expect to find actually done, but time and eyes forbid the search.

In Title I. chapter xiii. as above-mentioned, I see a chapter, entitled "On delinquencies (*delitos*) and delinquents not comprehended in this Code:" and therein, besides laws relative to matters ecclesiastical and ordinances relative to matters military, I find—namely in Article 185, over and above *delitos*, mention made of *culpas* as being commissible against the regulations or ordinances which govern (*rijan en*) any matters or branches of the public administration. But, of these non-comprehended portions of law, I see no more particular designation given.

For the purpose here in question, the more obvious, as well as the shorter and at the same time the more complete course would be—a general clause, killing at one stroke, with the exception of such as were kept alive by a list made out for that purpose, the whole body of the penal laws found in existence. This would be the only endurable course, supposing the survey, taken on this occasion of the field of penal law, an all-comprehensive one. But, to the gentlemen in question,—if the truth may be confessed, this same idea of all-comprehensiveness, considering how natural it is for a man to measure all other men's faculties by his own, scarcely should I expect to find it an endurable one: and, at the hands of him by whom accomplishment is regarded as impossible, accomplishment cannot reasonably be looked for.

Even among us, among whom, how ill soever applied, experience in the field of legislation is so much more abundant than with you,—men, in other respects not destitute of intelligence, are not wanting, to whom the idea of setting, in any such way, any precise bounds to the demand for punishment and coercion, is an intolerable one.

"Not being myself (without more trouble than I choose to bestow) able to descry any such limits, the thought that, by any labour he can bestow, it should be in the power of any other man to trace them out, is intolerable to me." Such is the confession, involved in every declaration, of the impossibility of substituting on the field in question light to everlasting darkness. What is above said with relation to your *Statute Law*, or, as it is called, *Written*,—may, with little or no difference, be found applicable to your *Common Law*, or, as lawyers love to call it, (because there is so much writing in it,) *Unwritten Law*. I mean the *Rome-bred*, commonly called the *Roman Law*. In it I behold a still more vivacious, as well as venomous hydra, than in your statute law. A hydra, yes:—but, unfortunately, not in your Legislation Committee—no, not even in its President, whatever he may behold in a looking-glass, can I behold a Hercules.

What if, by their Code,—after the storm of horror and contempt poured forth upon the system of penal law which they found in exis-

Digitized by Google

tence,—Gentlemen should be found to have left it in a state of undisturbed existence; adding thus, instead of substituting, the new load of their own framing, to a burthen declared by themselves to be an intolerable one! Should such an omission be found actually to have place, your exertions, Sir, will, I hope, not be wanting for the repair of it.

Do what you can, Sir, I cannot very well see how, in the situation of Advocates, a set of men, nurtured in Rome-bred law, can effectually be prevented, from pointing, if not in a direct, in a little less effectual though indirect way, to the old hag for an interpretation of it: nor,—without which the call would be hopeless,—men, in the situation of Judges, impregnated with the same poisonous milk, be prevented from giving ear to it. Thence it is, that, for substituting certainty to uncertainty, cognoscibility to uncognoscibility, there exists not any possible instrument, other than a complete mass of expository matter, subjoined all along to the main text, and intervening between the main text and the Rationale, interwoven, as in my above-mentioned French works, stands not only proposed, but, if I do not misrecollect, exemplified.

Yes, Sir, when completed, the collection of Codes should, either in the way of insertion or in the way of reference, contain everything, to which the force of law is given by government: and, while it embraces everything in existence by its power, it should embrace the whole contingent future by its providence.

One little proposed arrangement I would not venture, Sir, to trouble you with, were it not for the facility with which—and, I hope, without any very sensible wound to national honour and glory, or soreness in the organ of infallibility—effect might be given to it. In this Code, the numbering of the Articles goes on, I observe, in one and the same series, from first to last: number of the last Article, 829. In this arrangement no method has place but that of the numeration table, nothing of what is meant by *classification*. But, along with this arrangement, comes a system of classification in the customary form; or, at any rate, a form resembling what is customary. First comes a Part styled *The Preliminary Part;* then come Part the first and Part the second. Under Part the first, I find eight Titles; under Part the second, three: under every Title, except Title eighth and Title ninth, I find Chapters more than one: and, under every Chapter I suppose there may be, under little less than every chapter I am sure there are, Articles more than one.

This being the case, the little arrangement I would venture to propose is—that, to the number of the Article, reckoning from the first in the whole work,—be added, or substituted, the number of the Article, reckoning from the first in the Chapter of which it forms a part.

Suppose this not done, note, Sir, the inconvenience. In process of time, comes an Article to be inserted, or an Article to be repealed. Take in the first place the case of insertion. Suppose the insertion made at the end of the series, the system of designation receives no disturbance. But, suppose it made at the commencement of the series, the consequence is—that, if the numerical order is still preserved throughout the whole of the series thus constructed, the numerical names by which the Articles were originally designated are now all erroneous: and, to the number of each, the number of that which was next in the series must be substituted, or confusion will be the result: and, in whatever part of the series the new Article is inserted, the numerical names of all above it remain indeed unaffected, but those of all below it require to be subjected to the change: so, in case of a repeal, the consequence is—a state of things which is the *converse* of the above. In practice what will be the result? That no such insertion or expunction will have place. Whatever is therefore done, must be done by an independent law, leaving the numerical arrangement undisturbed. But, in this way, the logical arrangement, which has been given to the existing series of Articles, cannot be extended to any supplemental ones. Now,—instead of the arithmetical arrangement throughout, with the logical arrangement here and there jostling it,—suppose the usual logical arrangement had been employed, with the arithmetical, as usual, in subordination to it. In any Title, and in any Chapter of that Title, suppose a new Article added: at the end of the series of Articles contained in that Chapter let the addition be made,—the classification will be still preserved, and everything left unchanged and undisturbed.—Conversely, suppose repeal made of an Article in that same Chapter,—at the end of the series of Articles belonging to that Chapter insert an Article, giving notice that the Article in question is repealed. In case of substitution, the notification will be—"to such an Article (designating it by its number) substitute the following."

With that same method of theirs, it being theirs, the Honourable authors of the logical method in question were, it must be presumed, not ill satisfied. The little alteration here submitted has no other object than the giving to that same method of theirs a degree of undisturbed continuance such as it could not possess otherwise. If not *adoption*, this little intrusion may at any rate, I hope, obtain *forgiveness*.

As to the origin of this change-excluding method,—in the *organ of infallibility* I cannot but suspect it might be to be found.—*Question* to the *Genius of the organ:* To a work thus perfect, the Demon of presumption himself, could he ever have the effrontery to propose, in any part, a change?—*Answer:* Impossible.

Under the inspiration of this same Genius it was, that the authors of the Constitutional Code ordained in positive terms that no change should have place for eight years: tacking, at

Digitized by Google

the same time, by a stroke of refined policy, to the end of that period, an indefinite one. And, with the inspirations of this same Genius, the honourable authors of this same projected Penal Code appear to be no less sufficiently impregnated.

Quitting the *allegro*, I must return to the *penseroso*.

Proportioned to the severity, if there be any, in the above remarks,—especially if in any degree it should be felt to be warranted by justice,—will naturally be—the sensation of chagrin, produced in the breasts, of whatever persons are, in virtue of the parts respectively taken by them in the work, the subjects of them. Believe me, Sir, or believe me not, it is not without a correspondent chagrin on my part, that any such unpleasant sensation can ever present itself to my mind. Imagination finds no difficulty in placing me in their situation. Triumph, were I assured of it,—triumph on any occasion, and in any shape, if the persons triumphed over were present, would to me have more of concern than joy in it.

In no sensitive being could I ever yet witness pain,—whether body and mind, or mind alone, were the seat of it,—without catching, as if by contagion, a portion more or less considerable of it. It is thus that I am constituted: that I am so, is it not known to all that have ever lived with me!

The consequence is,—that in the present instance, lest I should fail in the fulfilment of what appears to me my duty towards your nation and mankind at large, it is all along necessary for me, to keep my mind abstracted from any effect it may have upon them in any such unpleasant way, as completely as possible. All this while, in supposing the production of chagrin by such a cause, I look—not to the honourable gentlemen in question, of none of whom have I the honour to know anything but what I see in public documents,—but to the universal and unchangeable nature of man, in the situation in which I see them placed. It is to this cause, as much perhaps as to any other, that we are indebted for libel law: it is for this cause, that men in such abundance—(and the gentlemen in question could direct your regard to some examples)—are so eager in their endeavours, to consign to ignominious death, those whose misfortune it is to differ from them. In speaking of chagrin from such a cause, I speak of that which, it seems to me, can scarcely fail to exist: not of anything which I should expect to see declared. How it is with man in such a situation, often have I had occasion to observe. Ask him, while the animadversion is applying itself—speak of the effect naturally produced by it, and express your own regret at the thoughts of it—you will be taken up short, your sympathy will be taken for insult: and the more acute the feeling is, the more decided will be the protestations of indifference.

Among the effects of these operations of mine, if any effects they have, I cannot therefore but number these unpleasant ones. As to their original cause, operations and effects together, it is no other than that which, on every occasion, has place in the case of the medical operator. Exactly as much unkind feeling, and no more, have I towards the gentlemen in question, collectively and individually, as the surgeon has towards his patient. When the surgeon operates, it is for the good of the individual operated upon, and, with the exception of his particular connexions, no others. In my case, it has been for the good of all Spaniards of both hemispheres, that, in wish and endeavour at least, I have been operating, and through Spain, sooner or later, for the good of the whole human race. Considering that, in all this, I make no personal sacrifice in any shape worth mentioning, judge, Sir, whether, without much danger from the imputation of credulity, you may not venture to believe me.

Be that as it may, judge then, Sir, whether, by the contemplation of any such universally encountered uneasiness, as above, I should have been justified in turning my back upon the unmeasureable mass of misery, which these remarks of mine, such as they are, have been labouring to alleviate, and in the production of which I should have been a participator, if, by any such narrow sympathy, my pen, such as it is, had been stopped. Think, Sir, whether, by a single instance of execution given to a single one of the one-and-twenty homicidal articles above spoken of,—every one of them, in the view of so many other attentive observers of human nature as well as myself, so much worse than useless,—suffering could fail of being produced, to a greater amount, than in all five of these same illustrious breasts put together, could be produced, by anything that has been said, or ever could be said, by the unknown stranger,—placed as he is forever out of their sight as effectually as if by the hand of death.

Ere this, your inward sanction cannot, I think, Sir, but, to an extent more or less considerable, have been given, to the persuasion, in which, on my part, this correspondence commenced: I mean, the persuasion of the inevitable disadvantage, with which, with reference to the greatest happiness of the greatest number, it could not but have been carried on, had my part in it been to be strained through a censor's sieve, though a *Conde de Toreno's* had been the hand that held it. Thus much I can venture to affirm, and without fear of contradiction,—that, in the multitude of remarks, the freedom of which, be the justice of them what it may, has been so undeniable,—there exist, in no small proportion, such as, even in the persuasion of their justice, a prudent man, in your situation, could not have brought himself to give utterance to. Whatever were the demand for animadversion, could any such man have poured forth any such body of ani-

Digitized by Google

madversion, on this same work of your selected colleagues, either in their presence or out of it? In your situation, could a man have spoken in any such strain, of the object of such extensive idolatry—(oh, that there were none worse grounded!) your Constitutional Code? In your situation could a man have spoken in any such strain of aristocracy at large? In your situation, could a man have spoken of the order of lawyers in particular, as I have found it so continually and indispensably necessary to speak of them? In your situation, could a man have spoken of the order of churchmen, as I have already begun to speak, and shall have to speak again, in my next and as it were postscript letter? In your situation, could a man have spoken of the situation in which your Cortes is doomed to sit, breathing an atmosphere, loaded, as I have shown it to be, with the fumes of sinister and corruptive interest? exposed to a *miasma*, against which scarce could a *Fontana d' oro*, in the metropolis of every province, afford a sufficiently powerful antidote? In your situation, could a man have anything near so strongly invited attention, as at every turn I have seen reason to do, to the union of the most perfectly unrestrained discussion, with the perfection of security, harmony, public economy and good government in every imaginable shape, in the instance of the Anglo-American United States? In a word, in your situation, could a man have spoken, as I have found but too much occasion to speak, of monarchy?—of monarchy, in any the least absurd and mischievous form in which that disastrous result, of primæval necessity in the infancy of society, can possibly present itself?

[In* your situation, could a man, Sir, have spoken, as I have found but too much occasion to speak, of monarchy? Fancy not, however, from anything I have said—fancy not, Sir, that you have been hearing me say—*Rid yourselves of your monarchy.* True it is, that no government, to which the name of monarch ever has been or ever can be applicable, ever has been or ever can be anything better than a system of established plunderage: plunderage—regulated indeed, but only because,—unless it be in this as in every case regulated,—the matter of plunderage, and with it the profit, must soon cease. In Spain, monarch's established share,—according to official accounts, taken and made public here about the year 1787,—one-fourth of the whole expenditure of the government: besides ulterior expenditure, to an amount unascertainable and unlimited.

True it is, that by no man has any attempt been ever made—by no man will any attempt be ever made—to show in what way it is that, from the subjecting all to the will of one or of a few, the happiness of the greatest number can receive increase.

True it is, that by no man has any attempt been ever made—by no man will any attempt be ever made—to show how, by giving everything to one or to a few, or by placing everything within the grasp of one or of a few,—subsistence, abundance, or security in any shape, can, any more than equality, be afforded to all, or to so much as the greatest number.

True it is, that by no man has any attempt been ever made to show—by no man will any attempt be ever made to show—that, in any instance, in which the ruling few were not dependent on the will of the subject many for their continuance in rule, they ever failed to give to their own interest the preference over that of the subject many; or how,—in case of every such constant preference of every one else to self as they pretend to give,—the human species could so much as continue in existence.

Is it in human nature,—that a monarch, full of resentment for restraint endured—restraint, which in every shape is in his eyes an injury—is it in human nature,—that a man so situated should, by anything but terror or impotence, be induced to part with any the least particle of power, which he has been in use to exercise, or so much as to wish for?

Is it in human nature,—that, in a state of indigence, (and so long as he has anything that is not his own, every monarch is in a state of indigence,) any such man, in any such indigence, should ever, with patience, behold himself reduced to a state of still more pinching indigence?

All this, Sir, without much strain upon the fancy, you may actually hear me saying: but still what you do not hear me saying is—*Rid yourselves of your Monarchy.*

Regulated plunderage, to whatever extent carried on, is still a less evil than unregulated plunderage to the same extent is.

Conducive to the greatest happiness of the greatest number no government can be—if, and so long as, the greatest number think the contrary: for, can any man be happy, any further than in his own opinion he is so? And, on this subject, or any other subject, sitting where I do, how can I tell what they think? Whatsoever care has even as yet been employed upon their minds, has it not been employed to make them think wrong, or, rather than that they should not think wrong, to prevent them from thinking at all?—No, Sir,—in a few years, in no eyes in which the greatest happiness of the greatest number is the only legitimate end of government,—will any government, other than that of a representative democracy as in the Anglo-American United States, be *legitimate.* But, either in one body, or in a cluster of confederated bodies, have you,—in any such proportion as *they* had it, or in any other sufficient proportion,—the stuff of which representative demo-

* Though written at the time, the paragraphs between this and the bracket in p. 543 were not inserted in the Letters as sent to the Conde de Toreno.

Digitized by Google

cracies are made? A representative democracy, not less necessarily perhaps than a monarchy, must have a chief. The Americans had their Washington: and, in default of him, with the exception of his next successor, every President they have ever had, would have made a Washington. But, among you? is there anything out of which a Washington could be made?—There may be, for aught I know: but how can I know?

Desirable or undesirable, in a constitution—made, of materials such as yours is made of—materials so irreconcileably discordant,—change, in one direction or in the other, is in my eyes altogether unavoidable. Saying this, what I do not say, is—*Rid yourselves of Monarchy.* But what I do say, is—Whatever change you make, be it in favour of the greatest happiness of the greatest number,—not of the ruling few, or of the supremely ruling one: be it, towards a form by which all causes of insecurity and discontent are excluded, rather than towards that form, under which among you, they were so recently operating; operating, all together, and with a so disastrously effective force.]

Now, Sir, permit me for a moment to indulge in a supposition, which, in its matter, whatever in your eyes may be the probability of it, will, I am confident, not be, in every part, displeasing to you: it is this. After sight of the objections brought to view,—Gentlemen, being in their own minds satisfied of the reasonableness of them to an extent more or less considerable, come forward,—and, on such considerations as, in their judgment, shall be best suited to the occasion, declare themselves content, or desirous, as they think best, that this work of theirs shall sleep a while on the shelf: or, (to take another supposition, and which, for the reason above given, may be perhaps a preferable one,) to an extent more or less considerable,—amendments, of the nature of those which I have ventured to submit, together with others that may perhaps be suggested, having been made,—the proposed Code, at their presentation, passes: but with a clause confining the duration of it to a certain limited time, and that, as above, not a long one. To these two suppositions, have patience with me, Sir, while I add one more. At the suggestion of these same most competent hands, not only is the door thrown open, but invitation given—given to every man whom it shall find disposed to accept it—to deliver in, with or without further remarks on the only as yet proposed Code, a Code of his own penning, with or without an interwoven *rationale*, as he shall be advised.

Whatever may have been the sins found to have been hitherto manifested, (always supposing that into a political situation so elevated it is possible for political sin to have found entrance,) whatever may have been the sins manifested,—a confession, such as the above, would it not be an ample—would it not, Sir, be a glorious atonement? By such sin, followed by such atonement, would not more merit be made manifest, more magnanimity displayed, more admiration deserved and called forth, than if in no shape sin had manifested itself?

Condemned, on the occasion of I forget what controversy,* with *Bossuet*—condemned by the constituted authorities of the country and the time,—Fenelon, Archbishop as he was, of his own motion, ascended his own pulpit, and, in the face of the assembled multitude, read his own condemnation, together with the retractation he disdained not to make in consequence. It is for the multitude at large I bring this anecdote to mind: for to yourself, Sir, it can scarcely, I think, be new. On a field of controversy such as that was—on the part of a mind such as that of the author of Telemachus was—sincerity may, to some eyes, appear not altogether exempt from dispute. Not so either self-command or enlightened policy. Matchless is as yet the splendour, with which the heroism of the man, displayed in a shape so unexampled, stands illuminated. Of victory over others, you may see almost as many examples as you see contests. Examples of victory over self, you may look for till you are tired. The retractation made by Fenelon, was made under the eye, and in conformity to the known pleasure of a man, from whom, on his part as on the part of everybody he ever saw, everything imaginable was to be hoped and feared. If, in consequence of any of the arguments submitted to yourself, Sir, in the first place, to the gentlemen themselves in the next place, any such self-sacrifice as above suggested should come to be made,—it will, by an admiring public, be seen to have had anything rather than hope or fear, looking to the individual, at whose suggestion it will have been made.

Well, Sir, if, in the honourable eyes in question, all this inducement is not yet enough, here is something more. Over the world of ideas, with this their instrument of conquest in hand, their aim has been (in their preface does it not stand sufficiently avowed?) universal empire. If, without any to share in it, it be in their eyes sufficiently within their reach, they will continue still to strive for it. In the other case, putting off Don Quixote, and putting on Sancho Pança, permit me to say, Half a loaf is better than no bread. So says our English proverb, for which there can, I think, scarce fail to be a Spanish one. If, leaving to some other, as it may happen, that lower part of the honour which belongs to the *fundator incipiens*, gentlemen's magnanimity can content itself with that upper part which belongs to the *fundator perficiens*,—that highest part may be still their own. Let experience, Sir, declare whether this sort of peaceful conquest be quite so remote from the re-

* The celebrated dispute as to Quietism.—*Ed.*

Digitized by Google

gion of probabilities as some would be glad to see it. By a rare union of merit with fortune, circumstances favouring, the Spanish Constitutional Code—has it not already found numerous adopters? adopters in all nations by whom the attempt has been made to render Monarchy (Oh, Herculean, or rather Sisyphian labour!) consistent with the greatest happiness of the greatest number? Let them have received a plan, in which the dictates of that principle are pursued with undeviating consistency—pursued over the two remaining parts of the field of law—the *Penal* and the *Civil*,—think, Sir, to what extent, sooner or later, Spain may not, by their hands, have spread over the willing nations, the blessing of her laws!

Whatever may be their determination on that question, in mine their can be no difficulty. If life and faculties continue, my Codes will successively be drawn up. The encouragement, which, from so many quarters, I have received, would, of itself, have been a sufficient *stimulus*. The discouragement, received at the hands of the Legislative Committee of the existing Cortes,—not to speak of the Cortes itself, which on this ground knows nothing of what it has seen, heard, or received,—has been an additional stimulus. As the work proceeds, it will find its way into various languages: the Spanish will not be the last.

Into your *Ultramaria*—including all that *was* your Ultramaria—it will, in that as well as other dresses, find its way without difficulty.

Thus far my determination reaches. But now commence my uncertainty, and my desire of information, in so far as, in a case such as that in question, information is possible. Is it through the regular channels—or is it in the way of contraband, with other piece-goods, that the fruit of my endeavours to serve your constituents will have to make its way, to them, and to their paulo-post-future representatives? I am prepared for both sides of the alternative: but it would be a convenience to me to know, in which of the two the greatest probability is to be found.

Sir, when in dernier resort, for giving effect to whatever endeavours can be used to serve your country, I put on the garb of a malefactor and assume an attitude of defiance, it is not—indeed it is not—with a light heart. But, in the state in which your legislation still is: still is, and for I know not what further length of time seems doomed to be,—what else, by a man whose first regard is neither for laws nor makers of law, but for those for whom such laws, in as far as they are anything better than nuisances, must be made,—what else, what better, Sir, can be done? If you are fed, must it not be against law? if you are clothed, must it not be against law? as if in one word *prohibition* were contained the united powers of capital, skill, and access to market! If you are instructed, no wonder, then, if this too must be against law.

Believe m[illegible] I speak of in [illegible] neither is the uncertainty what the pres[illegible]e a feigned one. I see which the Commi[illegible]t, until the millstone, nance from their co[illegible] but too much counte- your press, has either [illegible] have suspended over down upon it and cru[illegible]t aside, or been let see, in anything that is [illegible]—I am unable to any security for the futur[illegible] past or present, prehensive of those works [illegible] the most com- French, the first volume, tha[illegible] that are in talent of Dr Toribio Nunez, [illegible] zeal and time in Spanish: the others may [illegible] some for aught I know have followed [illegible] time, is, that, to the functionaries, whoeve[illegible]e it be, whom the Legislation Committee [illegible]ay for giving execution and effect to its [illegible] should not expect to find, that in my [illegible] Code, even with the *rationale* standing pa[illegible] it, there is anything that will give any hea[illegible] offence, than may have been given to the[illegible] already by those works, or even than that which may come to be given to them by these present Letters. But, in this respect, the lot of this little work remains as yet in total darkness: and, supposing this darkness cleared away, and cleared away in my favour, still the like darkness would cover those so much more extensive and important future works. If I have not, in either instance, any assurance of proscription,—still, in that quarter, in neither instance, have I anything like an assurance of toleration.

How is it possible, Sir, that I should? If, with the functionaries in question, matters for that purpose, are already, or shall have come to have been, arranged,—what man, whose misfortune it is to give publicity to anything by which their displeasure shall have been called forth, can have any sufficiently grounded expectation of being suffered to live: not to speak of incarceration in its most hideous forms, and for never ending terms. *Subvertir, trastornar, alterar, embarazar, guardárse*—any one of those words, not to look for others, would it not be sufficient, Sir, for the fatal purpose?

True it is, that the *Gobierno* of the day, the septemvirate of Ministers,—if I may believe the official assurance of one of them, entertained, not many months ago a desire to see these projected works of mine: a desire which they were accordingly pleased to make communication of to the King. But, besides that the offence, which I cannot but be too well assured cannot fail to be given by these letters of mine, had not then any existence,—the gentlemen, of whom the government of that day was composed, have for some time been—what, in a few months, the Gentlemen of the Legislation Committee in question will be: and, under the proposed Articles in question, I see nothing that should prevent these my quondam honourable and official supporters, from being involved in that same fate, which, but for the circumstance of distance, might so naturally be mine.

True it is again, that for any such work there could not, I should suppose, be much to fear,

Digitized by Google

supposing the circulation of these letters to remain unrepressed. But, unless it be from yourself, Sir,—for this, even in the present state of things, I cannot see any tolerably well-grounded assurance. How much less can I, under the proposed Code in question, if, in anything like its present state, it shall have become law?

Now then, Sir, comes a fresh vexation, which I know not how to avoid exposing you to: a request for answers, to a few unavoidably troublesome, and therefore sincerely reluctant questions. The uncertainty above spoken of, it being the cause and reason of them, will, I hope, be received as an excuse, or I have none.

Not to take, for the subject of the desired information, a work that as yet has no existence, I will take for a representative of it those Letters which have already given you so much trouble: and hereupon it is that I take the liberty of submitting to you the questions that here follow. To this work I might add those other tracts of mine on Spanish and Portuguese affairs, which in the original English have for sometime been (as you inform me) in your hands,—were it not that, if this little work is tolerated, there can be no fear for either of those lesser ones.

1. Without special interference, on the part of yourself, Sir, or any other person in particular, is it your opinion that they will, or that they will not, be suffered to circulate unrestricted? to be bought and sold freely, and all over the country, as books in general are? and this without danger in any shape to any persons by whom, in any part of Spain, any part shall have been borne in the publication of them?

2. If there be any such impediment to their diffusion, may I be warranted in any such hope, as that the influence of your declared opinion and wishes will be employed in the endeavour to remove it?

One word more, Sir, and the experiment, so unexpectedly made upon your patience and power of forgiveness, is at an end.

Prepare yourself now, Sir, for what I am sure you cannot be accustomed to receive—and what I myself am as little accustomed to give as to receive—a menace. Menace as it is, it is however of that sort, a man's sensitiveness to which is—not in the inverse but in the direct *ratio*, of the elevation of the place he possesses in the scale of public estimation, and of the goodness of his title to possess it. It is of that sort, or you would not have it to encounter, I believe, from anybody, and I am sure not from me. Nor yet from me, but for the weakness of my position, would you be troubled with it.

That which, in my character of unretained but not the less zealous advocate of your nation, I have need of, so far as you are concerned, is—to see you at liberty: at real, and not merely apparent liberty. But, to a man in a situation such as yours, exposed to so much pressure in so many sinister directions, it is impossible to receive liberty but from some opposing pressure.

In the assembly of the deputies of the people you cannot take your seat, but encompassed by colleagues, from whom, in all varieties of form, you will hear this in substance—"Leave the intruding foreigner unnoticed. Let him write on at his peril. The constituted authorities will take charge of him: What is he to us? What need Spaniards care for foreigners? Let him remain unanswered. Least said is soonest mended. What a pity you thus noticed him! But this will be a lesson to you, and to all of us in future."

In the midst of all this (for how guarded soever the expression, you see the meaning that is at the bottom of it)—after such a warning from the highest but narrowest section of the tribunal of public opinion,—is it in the nature of the case, that a man in your situation should feel himself in possession of real and effective liberty?

Oh no! it is impossible. I see virtue struggling, but tottering. Now then for a support.

Where the desire exists to maintain a line of conduct, which, in the nature of the case, cannot but be in contrariety to the wills and opinions, to which a man is under the necessity of showing a certain deference,—a sense of superior duty presents not only a justifiable cause, but may frequently be found a convenient and allowed plea, for yielding to it; and thus, out of obligation, real or though but apparent, springs real liberty.

In the tribunal of public opinion—the only efficient guardian of political virtue—there are (I believe I have already made my bow to the superior of them) two grand sections. In your situation, on a thousand occasions, the suffrages of that *one* section are irresistibly forced from the line of rectitude by the pressure of a swarm of particular interests. In the inferior and more numerous section, is the only steady seat of that virtue, which has for its object the greatest happiness of the greatest number.

At Paris, sits one of the most respectable committees of this multitudinous body. Paris, Sir, is not unknown to you: in Paris you behold, Sir, or report has been misled, a not altogether unattractive residence..." If I decline doing what is thus asked of me, what will Paris say to me?" This, Sir, is a question you need not be ashamed to put to any of your colleagues. Now then, Sir, for my menace—Return to Paris when you will,—these letters, in a French dress, will meet you there.

Now then, Sir, you are free: free to prefer public good to private considerations. Now, Sir, you stand at your ease, and armed. Receive at length in form, the assurance of that respect, tokens of which, so much more demonstrative than any express declarations can be, have in no part of this long address (I stand persuaded) been found wanting, from

JEREMY BENTHAM.

To the Comte de Toreno, &c. &c. &c.

Digitized by Google

LETTER VII.

On Religion, and the Plan pursued in the proposed Code, for the support of it by death and other punishments.

RELIGION—*Catholic Religion—Pena de muerte*—Death (so says Article 230) death, the portion of every one, who, directly and by deed shall conspire to *establish* (*establecer*) in any part of Spain (*en las Españae*) any religion other than the Catholic (Spanish Ultramaria included or not included:—I should expect to find it included.) *Establish?* What is *to establish?* A set of men who, in a house, appropriated or not appropriated to the purpose of religious worship, or let it be in open air, perform religious worship in a way of their own, —may not they, under this Article, by a willing Judge, without much difficulty, be killed for doing so?

On this subject, Sir, I should hardly have thought it worth while to trouble you with any observations on my part,—but for the words, by which, speaking of "*les Articles qui parlent sur la Religion*," you encourage me with the assurance—"*cela ne passera pas.*" As to its being meant to apply to all these Articles without exception, this could scarcely, I think, have been your meaning: but, at any rate, I hope the prophecy will prove a true one, if applied, as I hope it was meant to be, to this same 230th Article. It being no more my intention to say anything, either in this letter, or in any code of my drawing, against the Catholic Religion, than to run my head against a wall,—I find no difficulty, Sir, in submitting to you, in relation to this subject, a few scattered observations.

To every sincere and at the same time firm believer in the Christian Religion in general, and in the Catholic edition of it in particular, —it cannot, I think, but be matter of sad concern, to see the testimony of so many illustrious names, attached,—as in the Articles 230, 231, 232, 233, 234, 235, 236, and I know not how many besides, in the Chapter declared to be appropriated to that subject,—to any such declaration, as that, in their opinion, without support from temporal punishment inflicted on gainsayers, the belief in it would not be able to stand its ground.—Not stand its ground? Not in Spain? What should hinder it? In Ireland, as so many Irishmen settled in Spain can testify to you, it not only stands its ground, but gains ground: and that not only without support from oppression, but in spite of it.

"What?" (says somebody) "and, among all the sorts of acts, to which the Chapter on Religion seeks to apply prevention, and for the purpose of prevention, punishment,—is there absolutely not any one to which, if it depended upon you, you would apply prevention, and even in some shape or other, punishment?" O yes, some there are unquestionably: namely, all those acts by which, to human beings to an indefinite or other adequately large extent, I see any real evil,—in a word, any sensation of an uneasy nature, to a certain degree of intensity,—produced. Here, then, is a line drawn, which, if drawn, on the proper plan, would be at any rate a tolerably plain and clear one. All exhibitions, which, being to the minds of individuals taken in any considerable number, productive of uneasiness on a religious account, are offered to their senses in such manner as that the unpleasant sensation produced by them, whatever it be, is unavoidable—all such acts are, in my view of the matter, objects calling for prevention by means of punishment; and, in this consideration, I cannot but approve of the principle acted on in Articles 237, 238, and 239 of the proposed Code.

Why? Because man is a being but too susceptible of uneasiness, and the more of it he can be saved from the better. But—the Almighty—is he a being susceptible of uneasiness in any shape? For my part, I cannot find any sufficient reason for believing him so to be: however, if on this point, the Cortes, by means of information received from those to whom it belongs to give it, have been more fortunate,—this point must be considered as settled. But, this point being supposed to be thus settled, then come two or three others. The Almighty being susceptible of uneasiness, and in particular of uneasiness produced by words employed by men, in speaking to or of him,—is it his Almighty will to be saved from such uneasiness or not? if yes, does he stand in need of any human power, and in particular of that of the Cortes, to give effect to such his will? if, on the contrary, it is his Almighty will *not* to be saved from such uneasiness, but to continue suffering under it, does it become the Cortes to endeavour to oppose their power to such his Almighty will? and if yes, does such opposition afford any considerable promise of proving effectual? Corresponding questions, in regard to the Saints; to whom also, meaning doubtless the departed Saints, the protection provided for the Almighty is, in Article 237, (I perceive,) extended. Having ventured so far as to submit to your view these questions, the answers I must be content to leave, which I do without reluctance, to the competent authorities.

These things considered—"*blasphemies*," or "*imprecations*," (Article 237,) or whatever else be the denomination given, to portions of discourse, by which, with or without production of uneasiness, offence has been supposed to be given to God, or to the Saints, or to both, —so long as they are confined to writing or printed books,—or to private conferences, not open to the public at large, into which he, to

Digitized by Google

whom what is said is productive of uneasiness, entered of his own free choice, without being obliged to repair thither in prosecution of any matter of business;—to no such discourses, how revolting soever to myself, could I, if it depended on me, think of applying punishment in any shape. But, in a promiscuous multitude,—in a church suppose, a judicatory, or any other public building, or in a road or market-place, or a ship,—suppose such language uttered, uneasiness to *men* may be produced, and with it demand for punishment.

Whatsoever may be the justice—with which the above observations may be found to apply to offensive *audible* exhibitions,—with correspondent justice they will, I think, be found to apply to *visible* exhibitions: it matters not through what sense the wound passes to the mind, if the mind is wounded.

Whatever difficulty may have been produced in Gentlemen's minds, by offences styled offences *against* Religion, considered as commissible by individuals at large,—it is but a small matter (I should suppose) in comparison with that produced by offences *through* Religion: offences apprehended at the hands of that particular order of men, in whom, among you, the votaries of religion are wont to behold its special and little less than exclusively authorized guardians.

As to myself,—reference always made to the greatest happiness of the greatest number,—I beheld as issuing from this source two widely different mischiefs: the one *temporary* in its nature, the other *permanent*. 1. By the temporary mischief, I mean, that which consists in opposition made by this particular class of functionaries, to the government composed of all the other classes of functionaries: a mischief which, to the greatest number of the people, is great, in proportion as the conduct of the present government is, in a higher degree than that of the late, conducive to that same greatest happiness. 2. The permanent mischief is—that which I apprehend, from the junction of the body of the sacred functionaries with the profane ones: the junction, of the two particular interests of these two sections of the ruling few, into a body of particular and thence sinister interest, which will thereby be so much the more effectually enabled,—as, if the body be composed of men, it cannot but be as surely disposed,—to sacrifice to its own supposed greater happiness, the greatest happiness of the greatest number:—or, if *interest* be the word, the universal interest.

Supposing the old government to continue unrestored,—the temporary mischief, as above described, will be growing less and less every day, as the functionaries established under the old government drop off, and as the public mind grows more and more enlightened. In corresponding proportion will the permanent mischief take its place; and, when it has once swallowed up its present opponent the temporary mischief,—will remain in possession of the field, without anything, unless it be the spirit of the people, to oppose it. In a word, the temporary mischief is—superstitious influence: the permanent mischief, corruptive influence.

In the temporary mischief I see nothing very formidable: nothing but what, under the constitution as it stands, may admit of a remedy: an easy, a gentle, and an effectual remedy. This remedy, Sir, I shall proceed to submit to you: and with the less diffidence, considering how near on some points it comes to that which I see employed by the Committee.

For conciseness I shall put it into a form in some respects similar to what I should pursue in the penning of the correspondent part of a Code. But, I must beg of you not to consider it, as anything like an adequate sample of such a Code. To give to it anything like the precision and conciseness, that would be given to it in a regular work of that kind of which it would form a part, is altogether impossible. In any such fabric of my construction, the form of each part would be dependent on that of every other.

General description of the proposed remedy.

1. With the exception of ecclesiastical functionaries in general, and bishops in particular, addressing themselves in print or writing to the people within the range of their authority, in the exercise of their official functions,—leave to persons of all descriptions—ecclesiastics of all classes as well as others—the complete liberty of publishing whatsoever they please on the subject of religion, without exposure to punishment in any shape, or impediment to the circulation of such their discourses. N. B. Such,—only without the exception,—is the state of the law in the Anglo-American United States: and no mischief in any shape,—no such mischief as that of oppression by government, or disaffection towards rulers, or discord as between citizen and citizen through the instrumentality of religion,—is produced by it, or has place there.

2. On the part of an ecclesiastical functionary of whatever class, let the publication of any instrument,—on the face, or on the occasion, of which, either by his proper name, or the name of his function, he stands designated, either as sole author, or partaker in the authorship or publication, of such instrument,—designated whether in the direct way, or in any way howsoever indirect,—stand interdicted: unless and until it shall have received a license in writing, under the hand of a functionary of the temporal class:—say the political chief of the province.

In this case,—though the composition of the instrument is, as consistently with the religion in question it cannot but be, the sole act of the ecclesiastical functionary,—yet the publication of it may be considered as the joint act of the ecclesiastical functionary and the temporal:

Digitized by Google

or a relative censorship may be considered as established, with the temporal functionary for censor. The operation is the same, in whichever light considered.

N. B. To this purpose must be considered—not beneficed ecclesiastics only, but all ecclesiastics whatsoever, regular as well as secular. For, it is—not only from special power or dignity, but from the sacred character common to them all, that their influence is, in the instance of each, wont to be derived. Co-extensive is the designation employed in the proposed Code, Article 213.

I. *Reasons for the general liberty.*

1. Against vexation to the feelings of individuals, security will be sufficiently afforded, by the above proposed interdiction, of discourse, visible as well as audible, and of all other objects of an anti-religious nature, if exhibited in any such manner as to be open, to eyes to which they are disagreeable.

2. Against mischief by the propagation of mischievous errors, security will be afforded, by the unbounded faculty of refutation, left to all persons in whose eyes they possess that quality: and, of inducement adequate to the production of such refutation, in so far as the nature of the case admits of refutation, no deficiency can reasonably be apprehended: if there were any, nothing could be easier to government, than the providing an adequate supply to it. See the Tract on the Liberty of the Press, and Public Discussion.

3. Any fear, real or pretended, of seeing the will of the Almighty, in this or any other particular, overpowered and frustrated by human agency, is too palpably self-contradictory and absurd, to be defendible:—or to be accounted for, otherwise than by long-continued custom produced in its origin by the union of force and fraud, with or without superstitious terror.

4. Of the fear of seeing the will of the Almighty frustrated, in the particular instance of the existence and extent of the religion of Jesus,—the groundlessness is moreover demonstrated by experience, in the case of the Anglo-American United States.

5. Of the fear of seeing the will of the Almighty frustrated, in the still more particular instance of the existence and extent of the Catholic edition of the religion of Jesus,—the groundlessness is moreover further demonstrated by experience, in the case of *Ireland*, as noticed above.

II. *Reasons, against every such attempt, as that of designating, for the purpose of punishment, the sort of supposed mischievous discourse, meant to be interdicted on the score of opposition to the existing government, on the part of ecclesiastical functionaries, speaking as such.*

1. Such designation is, as to a part of the extent, *needless*. In so far as such discourse has for its immediate tendency to engage men in the commission of acts injurious to person or property,—the offence is met by the laws applying to such offences, taken in their utmost latitude.

2. As to the rest of the extent, it is *impossible*. The above case excepted,—it is not possible to reach by any description, the sort of discourses in question, when emaning or appearing to emane, from any person invested with the consecrated character. Out of phrases, extracted either from the Fathers, or even from the Bible,—in a word, from any writings, whatever they may be, which in the religion in question are held as sacred,—out of phrases thus extracted, may be composed, by any one who shall think it worth his while, a *cento*, abundantly sufficient for any such mischievous purposes. Of the portions of discourse thus extracted and employed, the application thus made will be a misapplication. True: but the source from whence they were extracted will not have been the less sacred. Too great to be contended against, will be the difficulty of passing condemnation, on matter extracted from such sacred sources,—when *seen*, or believed to be, extracted by such consecrated hands.

3. Uniform conviction will be hopeless. Howsoever, in such a case, a judge, zealous to a certain degree on the side of the existing rulers, may be disposed to pronounce conviction,—a judge, inwardly hostile or less zealous, can scarcely be punished for not doing so. Such (says the obnoxious ecclesiastical functionary to the judge) is the interpretation put by me: if my interpretation is erroneous, does it belong to you—not only to put an opposite interpretation upon the sacred text, but to punish me, only because mine is different from yours? Then comes the judge and says to his superiors, Can you punish me, layman as I am, for not punishing, on the ground of its being a misinterpretation, an interpretation put by a consecrated person on these sacred texts?

As to the particular restraint,—note, in the first place, the assumption on which the demand for it is grounded: it is—that, from the class of persons in question, under existing circumstances, hostility to the new order of things is naturally to be apprehended.

Grounds for the assumption are these: viz.

1. Hostility, from this quarter, has actually been manifested to a very considerable extent.

2. It is but natural, and even, morally speaking, excusable,—that, having been admitted into their respective functions when the former order of things was in force,—they should, by sense of duty, and thence by reflection, as well as by particular self-regarding interest, be attached to it, and led to give support to it.

III. *Reasons for the restraint.*

1. Addition of what is wanting, to the perfect freedom of discussion, which, by the supposition, was meant to be established by the general provision relative to this subject. The power,—exercised over the judgment of the people at large, by means of the fears, derived from the source in question, and infused into their breasts,—is a power by which inward

Digitized by Google

freedom of consideration is liable to stand excluded, and the mind to be rendered insensible to the force of argument on the other side.

2. From the freedom of discussion, no defalcation is thus made. Not even on the part of these functionaries themselves: since, for the giving support to their opinion, it leaves to them whatever liberty is possessed by any other citizen. They may give currency to whatever arguments they please, so as they do not make it known from what privileged source they come: the arguments will then operate with whatever rational force properly belongs to them, and no more.

3. *Exclusion of useless punishment.* If punishment were ordained to be applied to all such discourse, as, emanating from the quarter in question, shall, according to a description given of it, be deemed mischievous, it might, under the uncertainties above-mentioned, come to be now and then inflicted. This punishment, being upon the whole inefficacious, would be useless, and expended in waste: evil, produced without preponderant good.

Look, on the other hand, to the case, where the offence to which the punishment is applied, is the offence of publishing without the required license. In this case, the fact is so easily ascertainable, and so completely unexposed to dispute, that, by a presumption by no means unreasonable, it may be assumed that the offence will scarce ever be committed. If the instrument is not regarded as coming from the ecclesiastical functionary in question, it is not productive of the mischievous effect apprehended: as little is it, if, on being interrogated whether it has his sanction, he denies it:—if, on the other hand, he avers that it *has* his sanction, in this case, having by the supposition no license to produce, he plainly incurs the punishment. Under these circumstances, how small the probability is that a man should thus expose himself, is manifest.

True it is,—that, by this restriction, confined as it necessarily is to discourse in a written state, mischievous discourse from the quarter in question, not uttered otherwise than by word of mouth, is not reached. But,

1. For the repression of all *actual* mischief—all mischief in a tangible shape—all mischief, which is anything more than mischief in *tendency*—all mischief, in a word, which has for its subject-matter either *person* or *property*,—provision is made, by the general and standing laws, by which, acts mischievous to person or property are erected into offences, and, as such, made punishable.

2. The mischievous discourse in question being, by the supposition, not committed to writing,—the effect of it will be proportionately uncertain and transient.

3. In so far as any reports made of the purport of it find their way into print,—they will have to encounter the arguments, which,—on the side, that, by the supposition, is not only the right side, but the side which has the remuneratory power of government for its support,—cannot, as above shown, be reasonably expected to be deficient: and as, by the supposition, the mischievous matter will not be avowed by the functionary from whom it is reported to have come, they will not operate with more than their proper and reasonable force.

IV. *Punishment, proposed for promulgation without such license.*

1. Banishment, for a term to be limited, from every part of the Spanish territory.

2. Forfeiture of all ecclesiastical benefices situated within the Spanish territory, *i. e.* of the temporalities thereto belonging. N.B. If, by the ecclesiastical law recognised in Spain, any difficulty be opposed to such forfeiture,—for example, a difficulty as to the separation of the temporalities from the spiritualities,—this point will require to be settled.

3. In case of damage, produced to person or property, by means of any incitement, regarded as having been given by the unlicensed instrument,—obligation to make compensation for the injury.

Reason for article 1 *of the Punishment.*

Power of reoffending cut off in part.

Reason for article 2 *of the Punishment.*

Power of reoffending cut off in other part.

Reasons for article 3 *of the Punishment.*

1. The justice of the arrangement manifest to all eyes. N.B. But this supposes, that the connexion,—between the publication of the unlicensed instrument and the physical damage in question,—in the character of cause and effect, has been sufficiently ascertained.

2. Assistance necessary to the law more effectually secured: secured, on the part of the persons, whose subserviency is necessary to the execution of it: necessary—in the several characters of witnesses, and informers or prosecutors.

N.B. Capital punishment makes martyrs: a martyr may be more mischievous after death than during life. Neither by banishment,—nor by forfeiture of the ill bestowed invitations to idleness and anti-christian luxury,—nor by obligation of making amends for injury,—nor by all together,—is any such instrument of good or evil as *a martyr* manufactured.

V. *Punishment for the Political Chief, in case of his giving a license to an instrument of the sort in question, which, in respect of the mischievous tendency imputed to it, shall have been deemed unfit to receive a license.*

In case of actual damage produced to person or property,—obligation to make compensation:—as in the case of the ecclesiastical functionary, as above.

N.B. If, in the case in which no such damage has been produced, it be thought fit to apply punishment to the case of the temporal licensing functionary,—a description of the nature of the offence, committed by the improperly licensed spiritual functionary, will require to be given: a description, the difficulty of which has been above brought to view. But, in com-

Digitized by Google

parison with the peril that has place in the case of the improperly licensed spiritual functionary,—the utmost peril, that can have place in the case of the licensing temporal functionary, is very inconsiderable. The inducement, by which a person in the situation of the ecclesiastical creature of the former government is naturally stimulated to the commission of the offence,—has no place in the situation of the temporal creature of the new government by which the former government has been supplanted. Whatever therefore be the description given of the offence,—very inconsiderable is the probability, of its being, in any such situation as that of the temporal functionary in question, ever committed.

Suppose even that, in the text of the law, no penalty is attached to the supposed mischievous conduct in question, on the part of the temporal functionary,—even in this case, the requisite means of repression will scarcely fail of being applied. For this purpose, the power of removal, belonging to the superiors in the executive department, might, it should seem, suffice.

VI. *Punishment for the Political Chief, in the case of his refusing a license to an instrument of the sort in question, to which it is thought a license ought not to have been refused by him.*

In this case, there seems not to be any adequate demand for punishment. The situation in question would be too perilous,—if, for two offences of an opposite nature,—one of them so difficultly susceptible of precise description—punishment were thus menacing a man on both sides.

To put an extreme case. Suppose the result to be—that, from the quarter in question, no written instrument of the sort in question ever emanes. The greatest possible evil that could result from such deficiency does not present itself as very serious. From the same quarter there would remain, in unlimited quantity, in the oral form, instructions to any effect wished to be communicated, and in the written form, instructions equally unlimited, so it be in an anonymous state:—in that state, in which it will carry with it, no more indeed than the weight, but yet all the weight, that properly belongs to it.

VII. *Reason for the proposed temporariness of the restriction.*

1. Restriction, howsoever applied, being so much evil,—ought not to stand applied, but in so far as it has the effect of excluding evil to a greater amount. For the exclusion of the evil in question, the most perfectly effectual course would be—to continue the restriction so long as any one functionary, admitted into the order in question under the former state of things, continued alive. But, were the duration given to it thus protracted, the restriction would continue long after the need of it had ceased to exist. Threescore, or as far as fourscore years, might be the duration of it. Even supposing unabated hostility sure in the instance of every one of them,—it is not by one, nor by a small number, that in this way any considerable mischief would be produced. In a torch, though lighted, there is nothing dangerous,—except in so far as combustible matter, in a quantity sufficient for mischievous effect, is within reach of it. Say then in ten, say in twenty—say at the utmost in thirty years,—with the hope, even the desire, of producing mischief in this shape, it seems reasonable to believe, would be effectually extinguished: if not in all, at any rate in so large a proportion of the whole number, as to leave the rest in a state of sufficient impotence.

I was about to speak, somewhat at large, upon the *permanent* mischief, in regard to which gentlemen of the Committee are so much at their ease, and your humble servant so full of apprehension: I had even written more than as much again as, on the conclusion of this Letter, you will now have been troubled with. What has saved you is—the recollection, that in the composition of the mischief in question, the mass of the matter of corruptive influence in the hands of the clergy is but one element out of a number: and that therefore, under the head of Religion, discussions on this subject would not have their proper place.

I will not attempt, Sir, to take up any more of your time, by offering to your view the points of difference and the points of agreement—for points of agreement on this subject there are—between your Honourable Colleagues, and your troublesome correspondent. There would be no use in it: and, when confronted, the passages will, I hope, speak sufficiently for themselves.

By one thing or other, I have thus been insensibly led, to the obtruding upon you, as it were by a side wind, something like a sample, of the manner, in which,—in a Code furnished with a *rationale*,—the principle of the greatest happiness of the greatest number, would be applied to the several particular cases: the several elementary ingredients of the great compound—I mean the probable feelings of all individuals concerned—being, to the best of the operator's ability, looked out for, set down, numbered up, weighed and measured. Inadequate in a lamentable degree must unavoidably be any such sample. In an entire work of this kind, constructed in pursuance of an uniform design, that degree of condensation is practicable, which in any part taken by itself is impossible: condensation—a quality in this case so indispensable—to precision, comprehensiveness, and consistency, as well as notification. On the same subject,—you and your honourable colleagues, Sir, have before you a work, of which, in this place, I need say no more, than that, compared with their proposed Code, it is a different one. The eyes of "cultivated Europe"—Yes, and of the so much better cultivated America—not to speak of that which is beginning to be cultivated—are fixed upon you. You will make your choice.

Digitized by Google

And now at length, Sir, a period is put, to the course of continually increasing vexation,—which, by the philanthropic and spontaneous zeal of a common friend, has,—such have all along been my apprehensions,—been unawares imposed upon you, at the hands of your not the less sincerely respectful correspondent,

JEREMY BENTHAM.

SUPPLEMENTAL ADVERTISEMENT.

In the preceding Advertisement, some account was undertaken to be given of the effect of these Letters, so far as regards the honourable gentlemen at whose instance they were written, and the other honourable gentlemen who has been seen bearing a principal part in the drawing up and ushering in the important work which has been the subject of them.

Letter after letter went, and no acknowledgment came of the receipt of them. The Count's residence at Paris being but temporary, and no address having been given to me, the course I had taken was—after directing the letters *To Count Toreno at Paris*, to add in French, To THE CARE OF *the Spanish Mission*. At this time, fortune favoured me so far, as to station at Paris, a correspondent on whose punctuality I could depend:—Miss Frances Wright, author of that so justly admired and pre-eminently interesting work—*View of Society and Manners in the American United States*, a second edition of which has, at the end of a few months, just succeeded the first. At my request, that lady did me the favour to see the Count, and deliver into his hands, a letter of which the following is a copy:—

Mr Bentham to the Comte de Toreno.

QUEEN'S SQUARE PLACE, WESTMINSTER, *Sept. 18th*, 1821.

SIR,—This goes to you, I hope, by a private hand. In obedience to your commands, as signified by your letter of last month, and in consequence of your obliging present received on the 22d, I addressed to you by the post on the 11th of this month, the first of six intended letters, and on the 14th, the greater part of the second: the conclusion of the second I shall send this night by the post, not being able to finish the revision of it time enough to send it by the present private conveyance. The third and fourth will follow it in a very few days more. In the first or second of these letters, reference is made to two pamphlets, which Miss Wright, a young lady who was going from hence on a visit to General La Fayette, was kind enough to take charge of. It would be a great satisfaction to me to hear that anything of all this has been received by you, *as likewise to receive your directions respecting the course to be taken for the conveyance of the remaining letters.** Your letter to me not containing any directions on this subject, nor being dated from any street or other place at Paris, I could think of no course so proper, or so likely to succeed, as that which is expressed in the direction given to this letter, and which direction I have accordingly pursued in every instance. To Miss Wright, I gave in charge nothing more than the pamphlets in question, not having at that time been able to decide what course my letter to you should take. Understanding that the Cortes were to meet to do business so soon as the 24th of this month, I should not have sent a letter to you at Paris thus late in the month, but for those words in which you say in your letter "d'ici aux derniers jours de Septembre, que je dois retourner en Espagne." With the truest respect, I am, Sir, Yours,

JEREMY BENTHAM.

Under these circumstances I could not help considering myself as being in no inconsiderable degree indebted to Miss Wright for the Spanish letter underneath, of which the following is a translation:—

PARIS, *September 26th*, 1821.

SIR,—Perceiving from the quotations in your three valuable letters, the acquaintance you have with the language of the nation I belong to, I employ it on this occasion, in preference to any foreign one; following in this particular the example you have set me. Never should I have thought of making any such attempt upon your time, had it not been for my friend Mr Bowring, and the assurances he gave me, that you would with pleasure do whatever it might lie in your power to do, in compliance with any request, which, for a purpose such as that in question, I might be disposed to make to you. Under this assurance, it seemed to me that I could not have a more favourable occasion, for addressing myself to the illustrious writer, the celebrated Mr Bentham, whose works have spread so much light over the field of legislation, and thereby made such large contribution to the welfare of mankind.

I see, however, that the extent of the subject, and, above all, a sort of distrust on your part as towards the functionaries who consult you, have given their colour to your mode of complying with my request; although it does not appear to me that "the individual thus consulted" should have seen grounds for distrusting "the functionary consulting."

The latter of these will, with pleasure, quote with due respect the person by whom he is

* This satisfaction I was not destined to receive.

Digitized by Google

thus honoured: it accords not with his principles or his habits to attempt to gain reputation by hiding, diminishing, or appropriating to himself the merits of other men. With that urbanity which from such a quarter could not but be expected, it has been your care to avoid including me in any such imputation: I mean, by the testimony you give to the fact, that I have not the honour of knowing or being known to you, or of ever having written to you: by this testimony, coupled with the intimation of your opinion, that there was nothing about me that could have given room for any such particular distrust on your part towards myself. Be assured, Sir, that I am duly sensible to the value of the expectations you hold out to me, of your having in hand a work on this same subject. Not less so am I to the justice of those already published observations of yours, of which certain articles in our constitution are the subjects, confirmed as it is to me, by those which a pretty extensive course of experience has led me to make on the practice of legislative bodies. The non-re-eligibility of deputies is a most serious evil; detrimental, as it so manifestly is, to that stability and consistency which are so essential in men's proceedings in general, and more particularly in such in which the public interest is concerned. Although my first letter was not written under any such expectation as that of its meeting the public eye, you have not the less my free consent, Sir, to send it to the press, so as the present letter be an accompaniment to it.

It is with great pleasure that I shall always receive any such communications as you may be pleased to make to me: persuaded as I am, that whatsoever labour may have been employed upon them will not be labour lost.

I am, Sir, &c.

(Signed) El Conde de Toreno.

P.S. Miss Wright has the goodness to take charge of this letter for you.

Mr J. Bentham.

Paris, *Septembre* 26, *de* 1821.

Mui Senor Mio,

Viendo por las citas que VMd hace en sus tres apreciables, lo bien que entiende el espanôl; prefiero escribirle en mi lengua á valerme de otra extraña, siguiendo en esto el exemplo de VMd. Nunca hubiera yo molestado su atencion, ni atrevidome á distraerle de sus importantes tareas, si nuestro amigo Mr Bowring no me hubiera animado á ello, manifestandome el gusto conque VMd satisfaria mis deseos—En virtud de esto nada crei mas oportuno en el asunto de que se trataba que dirigirme al escritor ilustre, al célebre Mr Bentham, que por medio de sus obras habia procurado en materias de legislacion, difundir ideas luminosas y contribuir de este modo al bien de la humanidad—Veo sinembargo que lo extenso del asunto, y sobre todo un cierto género de desconfianza que tiene VMd en los funcionarios que consulta, le han impedido contestar à lo que le preguntaba, si bien nada hubiera tenido que recelar del *functionary consulting* el *individual thus consulted*. El primero citarà con gusto la persona que le ilustre, no fundando su gloria en ocultar, disminuir, ó quitar, el mérito de las demas—VMd con la urbanidad propia de hombre tan distinguido, no me comprehende en su asercion; y en verdad no habiendo tenido la honra de conocer antes à VMd, ni de escribirle directamente, como VMd mismo nota, no habia antecedente alguno que diese lugar a esta desconfianza.

Aprecio de todos modos la promesa que VMd me hace de una obra que acerca de esta materia escribe.—Asimismo estimo las observaciones generales sobre algunos articulos de la constitucion; entre ellas hallo algunas bastante justas, segun lo que me ha enseñado una larga experiencia de lo que son los cuerpos legislativos—La no-re-eleccion de diputados es un grave mal, pues falta aquel principio de estabilidad y consequencia tan necesario en todos los asuntos, y sobre todo en los de publico interes.

Aunque mi primera carta no fué escrita con el obgeto de que viese la luz publica, es VMd mui dueño de imprimirla con tal que imprima igualmente esta que ahora le escribo.

Tendré siempre mucho gusto en recibir las observaciones que tenga VMd à bien comunicarme; y estando seguro de que no serán sin fruto me ofrezco de VMd at° seg° serv^r L. B. S. M. El Conde de Toreno.

Miss Wright tiene la bondad de dirigir à VMd esta carta.

No other acknowledgment, nor any further instruction arriving,—on the 11th of October, I sent for Madrid by the post the following Letter, directed "A Monsieur M. le Comte de Toreno, &c. &c. &c. Madrid."

Oct. 11, 1821.

A Monsieur M. Le Comte de Toreno, &c. &c. &c.

Sir,

Circumstances considered, it seems to me that there may be a use, in my making this second acknowledgment of the honour done me by your second letter bearing date, Paris, Sep. 26. The first acknowledgment was made in a postcript to letter the 4th, being the 3rd of the series of letters announced in letter 1st. Whether, besides that 1st letter, you had, before your leaving Paris, received any others, I cannot be sure: though, from a passage in your above-mentioned 2d letter, I am inclined to think you had received one at least:* of the 6 sent or announced as above, 4 have already gone to Paris at different times, all of them directed in the same words as the one of which you mentioned the receipt: so likewise a part of letter the 5th. The whole, or near the whole, of the remainder, will go to-morrow (Friday);

* This doubt was a misconception of mine: the Count's Spanish Letter acknowledges three.

Digitized by Google

letter 6th, which at present at least is but a short one, will follow it the next Paris post-day, which is Tuesday Oct. 16: and, the same day or the next, the supplemental letter on Religion (letter 7th) announced in one of the preceding ones. I am, Sir, with all respect, your obedient servant,

JEREMY BENTHAM.

P.S. The following are the days on which the several letters were sent to our London Post Office.

1821. Sept. 11th, Letter 1.
Sept. 14th, Letter 2 (first part.)
Sept. 18th, Letter 2 (last part.)
Sept. 27th, Letter 3.
Oct. 2d, Letter 4.
Oct. 15th, Letter 5 (first part.)
Oct. 10th, Letter 5 (last part.)

The honourable gentleman speaks of distrust: of distrust on my part: and, as in his situation would very naturally be the case, seems to be not altogether pleased with it. Distrust on my part? O yes: *that* there was: distrust not entertained only but declared: the reader may have observed how explicitly declared. It is for this distrust that I see a sort of *action* brought against me in the *Court of Public Opinion:* though, such is the honourable plaintiff's candour, I cannot complain of the rate at which the damages appear to be laid. To this action, such as it is, my pleas are—in the language of English law—*Not guilty*, and a *justification*. 1. Not guilty. For,—the object of this distrust of mine—what is it? Not the individual, but the genus and the species:—*man*, the genus; *statesman*, the species: and, such as the imputation is, we are—both of us—not he the plaintiff alone, but I the defendant also—declaredly included in it. I will even go further—I aver even *ultrà-innocence*. If, on my part, in a case like this, the eye of suspicion could have been closed, in few instances could it have been so nearly so, as in the present. I turned in the first place to the Cortes at large. In the instance of these real representatives of the Spanish people, when compared with the sham representatives of this and that other nation, I could not but see a ground for comparative confidence—appropriate confidence—a ground alike obvious and incontestable. In the instance of Count Toreno in particular, this ground presented an aspect of peculiar strength. Him alone I saw breaking through the trammels of national vanity, and national prejudice. Him alone I saw looking round for useful information: looking to whatsoever quarter presented a chance of furnishing it. To whatever presumed source of information the call for it had been directed, the magnanimity manifested by such a call would have produced, in my mind, that degree of appropriate confidence which was so natural: and whether, by the consideration of the individual source applied to, that confidence could have been lessened, any one may judge.

So much for *not guilty*. Now for *justification*.—Suppression—suppression, to an amount more or less considerable—is charged, as having, in the passages complained of, been stated, as an undesirable, but at the same time a too certain result,—supposing the correspondence not submitted to the public eye. Such then being the alleged probable, what has been the actual, result? This security against suppression—such security as is afforded by the assurance of future publication—this security, as far as it goes, has been obtained; and still, so far as has depended on the honourable complainant, suppression has actually been the result: suppression, not partial only, but total, in the only place in which publicity could have been productive of any immediate effect on practice. Of the seven letters which the reader has before him, *three* (he has seen) have been acknowledged. But he has moreover seen—how and by what means they were caused to be acknowledged: fortune having, in the manner that has been seen, favoured me, and conveyed through the Count's key-hole, a sylph, to whose questions a *yes* or a *no* could not be refused. It is moreover to her account that my suspicion cannot forbear placing that same license, whereby publication stands authorized. Since that day, (Sept. 26th, 1821,) neither in black and white, nor by word of mouth, has a syllable from him on the subject been extractible. The letter, with which he was presented, or at least endeavoured to be presented, upon his return to Madrid, the reader has seen likewise. Mr Bowring, by another such favour of fortune, was sent to meet him there. Have you seen the Count? What has he received? What says he to it? To questions to this effect, put by me to my friend, an answer could not be refused. One alone could be given—*Invisible*. Invisible? How so? unless that, by the Count, my good genius, though so lately his own likewise, was now taken for his evil genius?

Thus it is, that in the case in question, while all use to the Spanish nation was dependent upon and proportioned to publicity,—on the one part has been seen exertion for the securing of it, on the other part silence and secrecy, continuing from beginning to end.

In letter sixth, may have been observed two concluding questions put to the Count. 1. Think you, Sir, that, without any interposition on your part, circulation will be permitted to these letters? 2. If not, will your influence be employed in the endeavour to procure a permit, or at least a connivance, for the article you have been pleased to bespeak of me? Still, for answer, silence: and in such a case, silence (it need scarce be said) is a negative. Now as to the effect of this same negative. Nor yet, if report be to be credited, is silence on his own part the only instrument of suppression my honourable correspondent has at his command. In Madrid, as elsewhere, sits a Board, for the securing of whatsoever requires

Digitized by Google

to be secured, in relation to the press: on the part of all constituted authorities, good conduct, at all times, and in every shape: and for this purpose—for there, as elsewhere, such are the means employed—concealment of every such instance of bad conduct, as may at any time have had place. For a gilding to the pill, here as elsewhere, *Jury*, if I mistake not, is the title conferred upon this Board. At Madrid, report gives to Count Toreno the direction of this instrument: and such is the hold taken upon men's minds by this apprehension, I am assured that, should it happen to any of these letters to make their appearance at that chief seat of Spanish liberty, amendments adapted to existing circumstances must and will, in the first place, have been made in them: so that, to an extent more or less considerable, what I am thus seen to have said will be—not what I *have* said, but what I *ought* to have said.

All this while, let not injustice be done, in any shape, to my honourable correspondent. On nothing which he has done or left undone, is any breach of promise chargeable. What he promised, was—that he would *himself* pay attention to what he received from me: what he did *not* promise, was—that any one else should have it in his power to do so.

Curious enough, unless my information is substantially incorrect, is the contrast exhibited by the effect of these Letters on the two most conspicuous characters in the Cortes,—Count Toreno, and M. Calatrava: that Mr Calatrava, who, on the occasions of greatest importance, has been seen taking the lead. "Yesterday," (says a private Madrid letter of Dec. 17,) "Yesterday, Calatrava made, I am told, a most eloquent eulogium on 'the illustrious, the learned, the *humane* Bentham.'" How different this result from anything that could naturally have been expected! In the case of my honourable correspondent, gratitude for the distinction conferred on me, added to esteem for the liberality manifested by an application such as hath been seen, could not but concur in giving a certain smoothness to every passage, by which, in the course of the discussion, his individuality was brought to view. In the case of the chief penman of the Projected Code,—after every smoothing-iron that presented itself had been employed, necessity still gave to everything an irremediable asperity. Far indeed from pleasant to the author of the Letters was the invidious office, which, as the work advanced, after the promise of it had been made, the nature of the case was seen to have forced upon him: the office of *mischief-maker* between two colleagues. Never accordingly was sympathy more sincere than was mine, as often as the predicament, in which the two great statesmen had been placed by me, offered itself to my view. But, on the one hand, on a point of the most extensive influence, stood the interest of the whole Spanish nation: not to speak of so many other nations in the background: on the other hand, the transient feelings, of two individuals, whose situations could not but be frequently exposing them to similar ones.

As to Mr Calatrava's knowledge of the treatment he had been receiving at my hands, —it is scarce necessary to observe, that, while Count Toreno was sitting at his elbow, and it was known to other members of the Cortes that a Spanish translation was in hand, few things could be less improbable, than that anything which the honourable gentlemen was disposed to know of the matter, should be unknown to him. The more than friendly language, in which, as above, the author of the provocation was spoken of—spoken of by him who was the object of it—should be present to the reader's mind, as often as any of the particulars, by which the provocation was given, present themselves to his eye or to his memory. Yet have I seen a letter (it was indeed from a fellow-countryman of his, and a declared adversary) in which this forgiving statesman is charged with being of the number of those, who do not bear their faculties altogether so meekly as could be wished. Magnanimity—prudence in this or that shape—to which of these two virtues, or to a happy mixture of both, shall so rare and exemplary a return of good for evil be ascribed? To the Hermit at London in his hermitage, all this matter is perfectly opaque: at Madrid it is perhaps transparent.

Digitized by Google

SECURITIES AGAINST MISRULE,

ADAPTED TO A

MAHOMMEDAN STATE,

AND PREPARED WITH PARTICULAR REFERENCE TO

TRIPOLI IN BARBARY.

NOW FIRST PUBLISHED FROM THE MSS. OF

JEREMY BENTHAM.

NOTE BY THE EDITOR.

THE papers from which the following pages are extracted bear different dates, ranging from August 1822 to February 1823. With the exception of the matter of Chapter IV., the originals are in detached masses, to which the Author does not seem to have applied any system of arrangement: probably owing to the circumstance that the work was abruptly interrupted, either because he found it could not be immediately applied to practical use, or for some other cause. The value of this fourth chapter, which contains the securities *in terminis*, is in the skill with which it is adapted to the uses of any reforming and enlightened monarch of a Mahommedan and semi-barbarous country, who may wish to give his subjects the utmost advantages of a civilized and constitutional government, which he can convey to them without resigning his own authority or infringing on the religious observances and national habits of the people. The other chapters will be found to contain,—a short analysis of the forms which misrule adopts under arbitrary governments; a demonstration that any remedies that may be adopted must depend for their efficacy and existence on the force of public opinion; an account of the manner in which that force may be brought to bear most efficaciously in such a direction; and a calculation of the chances which any such project as that propounded has of being sincerely adopted. Besides the papers here printed, there are in the same collection many others having particular reference to the state of the Pachalic of Tripoli, and to individuals connected with its government at the time when the author wrote. Finding these to possess only a local interest, which the lapse of time has materially diminished, the Editor considered that the better course would be to omit them. The information contained in them was furnished by Hassuna D'Ghies, Ambassador from Tripoli to London, at whose request, indeed, the Author had entered on the subject. This man had, by his amiable disposition, extensive accomplishments, and singularly enlightened political views, endeared himself to many Europeans, who have lately had to lament his sudden death, under circumstances which caused a suspicion that he was poisoned. He was about thirty years old when he became acquainted with Bentham, and had been eight years resident in Europe. On his return to the East, he became Editor of the Newspaper published at Smyrna by the Turkish Government.

Digitized by Google

CONTENTS.

Page

CHAP. I. Preliminary Explanations:
Sect. 1. The word Securities: its Superiority to others used for the like purpose 557
2. Misrule defined and explained - - - - - - - 558
3. Misrule—its Shapes - - - - - - - - 559

II. Public Opinion the sole Remedy—Parallel between the Public-Opinion Tribunal and the Official Judicatories:
Sect. 1. General View of the Public-Opinion Tribunal - - - 561
2. Attributes of a Judicatory - - - - - - - 563
3. Constitution of this Unofficial Judicatory - - - - 564
4. Functions or Operations of the Supreme Unofficial, compared with those of the Official Judicatories - - - - - - - 566
5. Power of the Unofficial compared with that of the Official Judicatory 568

III. Notification and Publication in reference to Securities:
Sect. 1. Subjects of Notification, and thence Publicity - - - - 572
2. Notification, with respect to Ordinances - - - - 573
3. Means of Multiplication of Ordinances - - - - 575
4. Application of Public Recitation to Ordinances - - - 576
5. Notification and Publicity as to Transgressions - - - 577
6. Notification and Publicity as to Suffrages—Newspapers: Letter Post - 579

IV. The Securities in detail.
PART I. Securities in favour of the Nation, considered in the aggregate:
Sect. 1. Securities against Vexation, on account of Religion - - - 583
2. Securities against National Gagging; or Security for Appeal to Public Opinion and the Power of the Law, on the subject of the conduct of all persons whatsoever, Functionaries as well as Non-functionaries - 584
3. Securities against National Disarmament and Debilitation - - 585

PART II. Securities in favour of Individuals:
Sect. 1. General Declaratory View - - - - - - - 586
2. Securities against Secret Confinement: for protection of the persons of individuals against oppression by persons in authority, without, or even with the knowledge of the Sovereign - - - - ib.
3. Securities against Injurious Banishment - - - - 587
4. Securities against Secret and Unlawful Homicide - - - 588
5. Securities applicable to the case of Mysterious Disappearance - - 589
6. Securities against Extortion of Personal Service - - - 591
7. Securities against Official Depredation. - - - - 591
8. Securities in favour of Private Writings: or Securities for the Writings or other Documents of Individuals, against Wanton or Oppressive Seizure, Destruction, Damnification, or Inspection by Non-functionaries or Functionaries - - - - - - - 592

V. Hopes of Success for any Project having such Securities for its end:
Sect. 1. Value of the Concession on the part of the Sovereign - - - ib.
2. The Probability of the Sovereign's consent abstractly considered - 594
3. Inducements by which, in the situation of Sovereign of Tripoli, a man may be engaged to concur, and take the lead in the proposed Change 596

Digitized by Google

SECURITIES AGAINST MISRULE.

CHAPTER I.

PRELIMINARY EXPLANATIONS.

SECTION I.

The word Securities: its superiority to others used for the like purpose.

GENERALLY speaking, legislative arrangements that have been established, or endeavoured to be established, for the security of the governed against the governors, have, for their success, trusted to force actually in hand: if not to force in a state of independence, as in the Anglo-American United States, at any rate, to force in a state of resistance, as in England, in the Petition of Rights under Charles I., and the Bill of Rights, passed on the transference of the Crown from James II. to William III.: and in France, in the Déclaration des Droits de l'Homme, passed by the earliest of the successive national assemblies.

This sort of title has in itself one radical defect: it presents no conception of the object which it has in view. The object which it really has in view is, as here expressed, the affording to the governed security against misrule—that is bad government—on the part of the governors. Nothing can be clearer than the meaning given of the word *security:* nothing for the present purpose can be clearer than the meaning given to the words *bad government:* or, as their signification is expressed by a single word, misrule.

When, instead of the word *securities* and *misrule*, you employ such a word as *right*, a cloud, and that of a black hue, overshadows the whole field. The attitude you take is restless, hostile, and uneasy. You show that you are in discontent, but you show no clear grounds for your discontent. What you give intimation of—though even to this no explicit expression is given, is—that some rights of yours have been violated, and that a determination has been formed by you not to sit still and see them violated any longer. But these rights, the violation of which is thus declared—from what source is it that they are derived? To any such word as right, no other conception can ever be attached but through the medium of a law, or something to which the force of law is given: from a real law comes a real right; from an imagined law nothing more substantial can come than a correspondently imagined right. Lay out of the question the idea of *law*, and all that you get by the use of the word *right*, is a sound to dispute about. I say I have a right: I say you have no such right: men may keep talking on at that rate till they are exhausted with vociferation and rage; and, when they have done, be no nearer to the coming to a mutual conception and agreement than they were before.

On the other hand, if no demand for security againt misrule can have place, until and except in so far as some law is violated, no such security can possibly be obtained in the case in which it is most needed: for the case in which it is most needed is that, in which, the laws being altogether at the command of the rulers, the very work of their hands, no violation of law can be needed for the accomplishment of the misrule: on the contrary, the more frequent and extensive the violations of the law are, the more extensive is the mitigation thus given to the evil, for the production of which they were established.

By the phrase—securities against misrule, all this perplexity is avoided.

But the great advantage of it with reference to practice is—that it is employable, and with equally indisputable aptitude, in every state of the society: whatsoever is the condition of the governed under or in relation to the governors. It may be employed by a sovereign representative body, on the occasion of the establishment of the constitution of the state. It may be employed, not only under a monarchy, but by a monarch altogether absolute, unless in so far as by the arrangements in question a limit, or at least a sort of bridle, to his authority is regarded as being applied.

For the subjects to say to the sovereign,—This or that is our right—say or do what you will—is as much as to say, you are no longer sovereign. For the sovereign to be made to say—You have such and such a right as against me, or I have not such and such a right as against you, is as much as to say, I am no longer your sovereign.

On the occasion of the here proposed arrangements, the course taken is—to put them in such a form that, with the government still in the state of an abstract monarchy, they may possess whatever chance of acceptance can, in the nature of the case, be possessed by any arrangements of the same or equally effectual import, aiming at the same object: but if, even in so unfavourable a state of things, a paper in this form may possess a chance of acceptance answering its wished for purpose,—in proportion as the state of things is more and more favourable, its aptitude will be still less and less exposed to doubt.

That, otherwise than by fear of evil, a sovereign can be brought in any way knowingly to tie up his own hands is, generally speaking,

Digitized by Google

too much to expect. But what without such fear he may perhaps be brought to consent to —with less reluctance at least, is, to tie up in the way in question the hands of his agents: in which case matters may be so managed, as that without knowing it he may thus be made to throw obstacles in the way of his own steps, in so far as they proceed in a sinister direction.

Section II.

Misrule defined and explained.

Misrule is bad government: it comprehends whatsoever is opposite to good government. A government is good in proportion as it contributes to the greatest happiness of the greatest number; namely, of the members of the community in which it has place. Rule may therefore come under the denomination of misrule in either of two ways: either by taking for its object the happiness of any other number than the greatest, or by being more or less unsuccessful in its endeavours to contribute to the greatest happiness of the greatest number.

No government having anywhere had place that had for its main object any other than the greatest happiness of those among whom the powers of government have from time to time been shared, all governments that have hitherto had existence have had more or less of bad in them. Of all governments, the worst have uniformly been those in which the powers of government have—all of them—been in the hands of one; because in that case such government has had for its object the greatest happiness of that one member: and to that object the happiness of all the other members has of course been made a continual sacrifice.

Take any government whatever: by rendering it less bad than it is, whatsoever means are capable of being proposed or so much as thought of, are reducible to one or other of two heads:—1st, arrangements by which a change will be effected on the form of the government; 2d, arrangements by which a check will be applied to the power of the ruling functionary or functionaries without any such change. Arrangements which belong to the first of these heads constitute a seperate subject of consideration. The set of arrangements herein proposed under the notion of their serving more or less in the character of securities against misgovernment otherwise called misrule, require not any such changes. The supposition on which they are grounded is that by one means or other, without any such change, the ruler or rulers may, by one consideration or other be induced to lend their power, to the purpose of giving them the sanction of law. Not therefore to misrule in every shape is it in the nature of the here proposed arrangements to apply a remedy; at least in a direct and immediate way. Not to misrule in any of those shapes in which it bears upon the members of the community in an undistinguishable mass: not, for example, to lavish expenditure, and to unnecessary and therefore unjust war; evils, towards obviating which, nothing can be done by any means other than a change in the very form of government. To those cases alone has it any direct and immediate application, in which the evil comes home to the feelings of particular, and those determinate, and in each case assignable individuals.

Considered in its application to assignable individuals, misrule may be termed *vexation:* the persons considered as the authors of it being persons clothed with power, the vexation may be termed *oppression*. In so far as from the burden thus imposed, benefit in any shape is received by the authors, or by any whom they are in this way disposed to favour, the oppression is *depredation*.

As to the authors, though to a boundless degree, and in a conspicuous and avowed manner, the only persons in whom oppression and thence depredation can have for its authors are those by whom in the state in question the supreme power is possessed, yet to a great and indeterminate amount, not only their several subordinates—instruments of, and sharers in, that same power—but the rich in general possess as such, and to an amount rising in proportion to their riches, in addition to that *desire* which is in all men, the *faculty* of giving birth to those same evils.

The shapes in which vexation is here attempted to be combated, are not all the shapes in which the evil is capable of showing itself; for against these thus taken in the aggregate, security more or less effectual is already in every country taken, and must therefore, in the country in question, be on the present occasion supposed provided by the existing laws. Calumnies, for example, or personal injuries, or injuries to mental or personal rights, are among the subjects not here taken on hand, as being of such a nature that the particular remedies here provided are either needless or inapplicable, with relation to them. The only vexations belonging to the present purpose, are those which, on those over whom power is exercised, are in a particular manner liable to be inflicted by those by whom the same power is possessed. Meantime these being the same persons, at whose disposal everything is that bears the name of law, to seek to afford, by means of new laws, security against those persons: to seek to afford, by means of new laws, security against those at whose disposal those laws will be when made, is an enterprise which, to a first view, can scarcely fail to wear the face of absurdity. As well, may it be said, seek to obtain security against the attacks of an armed man, by means of other arms placed in that same man's hands. Such (it must be confessed) would be the absurdity, if it were necessary that the armour, in the manufacturing of which he will be requested to concur, should be armour of the offensive kind, or even of the effectually defensive kind, and that intended to be in any manner employed against himself.

Digitized by Google

But on his part this conception is not a necessary, nor altogether certain one. Against depredation and oppression, from which he derives not, in any shape, any benefit—against depredation and oppression, exercised by, and for the benefit of, the rich in general, or by even his own instruments, and other subordinates in particular, it may happen to him not to have any strong or determinate reluctance to see a tolerably essential security provided: and as against any oppression which it is, or may have come to be, his pleasure to exercise, what may happen is—that it will not be very plainly visible to him, how it is possible that any supposed security can in reality be efficacious. But more of this when the proposed remedy, together with the evil in all its shapes, have been distinctly brought to view. Whatsoever may be the chance which the here proposed remedy affords of being productive of the wished effects, the smallness of it affords not any ground of objection to it: for, under a monarchy, such being the nature of the case, as not to admit of any other, the option is—this or none. The great difficulty is in obtaining the concession. Should that point be accomplished, its efficacy to no inconsiderable degree need not be despaired of. Abundant are the instances, which history affords, of concessions having the same object: some in which the engagements taken by these concessions have been grossly and continually violated. Still, however, there is sufficient reason to think, that without this safeguard, such as it was, the instances of oppression would have been still more numerous and afflictive. The charters by which the concessions were expressed, afforded a determinate standard of reference—a rallying point. If, even in this case, paper, when employed in the character of a breastplate of defence against the sword, was not altogether destitute of efficacy, still less need its efficacy be despaired of in the present case: for in none of these instances was any such attention applied to the making the most of the only possible remedy, as will be seen employed in the system of arrangements here proposed.

Section III.

Misrule—its Shapes.

The here proposed system of arrangements has for its object, as above set forth, the applying, to such of the evils as are most apt to be produced by the immediate agency of the Monarch, or those in authority under him, such remedies as present the least unpromising chance of obtaining the application of them at his hands.

One word—*misrule*—will serve for conveying a general conception of the disease: another word—*publicity*, for conveying the like conception of the remedy: the only remedy which, (it will be seen,) without a change in the form of the government, the nature of the disease admits of.

Thus much for a general conception. But, under both heads, some explanations present themselves as necessary: necessary, in the first place, for rendering the ideas clear and determinate: in the next place, for showing that it is to this one *recipe, publicity*, that relief, in every shape in which the nature of the disease admits of it, is referable. Some observations will follow, in the view of showing in what way application may be made of it to most advantage; having for their object the showing what the chance is, that the remedy will be found obtainable.

First, as to the shapes in which the evil is capable of presenting itself.

Shape 1. Sufferers all determinate: the individuals all determinate and assignable. Examples—Homicide, confinement, banishment. In the aggregate of this suffering, consists the evil of the first order: for distinction's sake, it may be called purely private.

Shape 2. Sufferers, altogether indeterminate. Examples—Waste of public money: act of engaging in an unnecessary war. In this case, the evil may be called purely public.

Shape 3. Immediate sufferers determinate, but the greater part of the evil composed of the sufferings of individuals altogether indeterminate. Examples—1. *Political Gagging*: i. e. obstructing in any way the communication between mind and mind, for the melioration of the common lot, on any subject of discourse; more especially on a political subject. 2. *National debilitation*—weakening the means of defence and security, in the hands of the people, against injury at whatsoever other hands, those of the rulers themselves not excepted. In this case, the evil may be said to be *mixed*; or public through the medium of private. Through the sides of one individual the public is wounded: that is to say, all other individuals are: as well those who do not feel the wound, as those who do.

Under the general name *vexation*, may be included every political evil, in so far as the consideration of it is confined to the sufferings of determinate and assignable individuals: namely, the individual persons who are the immediate sufferers by the individual mischievous act in question.

Oppression is *vexation*, considered in so far as the hand of power is considered as occupied in the production of it. Thus, if inflicted without sufficient warrant, *i. e.* without being necessary to the preserving the community from evil of still superior magnitude,—*homicide, confinement*, and *banishment*, are,—if produced by a hand not armed with legal power, acts of vexation simply, if by a hand armed with legal power,—if for example by the hand of the sovereign, acts of *oppressive vexation*, or in one word, *oppression*.

In oppression by the hands of rulers, two stages are discernible, and require to be distinguished. By oppression in its *first* stage, the disease is produced as above. By oppre-

Digitized by Google

sion in the second and last stage, the remedy is excluded, or endeavoured to be excluded.

By the same act, whereby oppression in this its last stage is exercised, oppression in the first stage may also be exercised: it is so in most instances, in those several cases, in which the evil has been spoken of as being of a mixed or public and private nature: the afflicting hand wounding the public through the sides of individuals. Examples—1. *Political gagging;* 2. *National debilitation*, as above.

In so far as the suffering, by loss or otherwise, to the party vexed and oppressed, is attended with profit to the oppressor or other vexer, or any one whom it is his design thereby to favour, *oppression* has the effect of *depredation.**

Thus it is, that, in the case where a community is plundered by its rulers, by the support given to an unnecessary war, suppose two such wars, and the sums extorted for the purpose of the war the same in both, the one in which depredation to the greatest amount has had place, is thus far the least mischievous.

If, during the course of the war, a million of money is paid for gunpowder to the makers, better it is for the community that the half of it be put in the shape of profit into the pocket of the makers, than that the whole be converted into gas, producing or not producing the destruction which it was intended to produce.

Only to aid conception are the above suppositions put: for, how far they are from being ever exemplified, is sufficiently manifest.

The modes of oppression against which security is here endeavoured to be provided, may be more particularly enumerated as follows:†

1. *Vexation on the account of religion:* or say, *Religious persecution.*

N.B. In this particular case, what may happen, is—that the sovereign, if from oppression on this account, he does not derive any particular gratification, may be content to deprive his successors of it: while by his own act he stands deprived of the power, only because he has no desire to make use of it, they will by the same act stand deprived of it, even though they should have the desire to make use of it. In this case, therefore, a direct promise of non-exercise, or even a direct appropriate abdication may not without hope be sued for at his hands.

2. *Secret confinement*, viz. of the person of an individual: confinement, namely within the walls of a prison, or within any other less narrow place.

3. *Secret banishment:* i. e. by forcible exportation, or in any other way exclusion of an individual, from the whole of the dominion of the state in question, or from this or that part of it.

4. *Secret homicide.*‡

5. *Mysterious disappearance:* namely, disappearance of an individual from a cause as yet unknown: it must be any of the above three—confinement, banishment, or death.

6. *Official depredation.*§

7. *Extortion of personal service.*‖

8. *Obstruction of intellectual communication.*¶

---

* Note, that in so far as all future evil is out of the question, the loss to sufferers being supposed the same, the evil produced by depredation is less than that produced by barren vexation, by destruction and otherwise; for in the case of depredation, though the enjoyment produced is less than the suffering, still to set against the suffering, there is the enjoyment.

But, when the future is taken into the account, the future, pregnant with the danger and the alarm—then it is that the evil from depredation may be seen to be greater than that from barren vexation: the inducement that excites men to the productive injury, being so much more extensive and constant, as well as commonly stronger in its operation, than that which excites them to the barren one.

† The analysis which immediately follows, bears, in the original MSS., a date two months apart from the more general analysis given above; and perhaps the author would not himself have promulgated them in juxtaposition, without some explanatory remarks as to the different arrangement adopted in the two cases. It will be remarked that neither of them follows the exact order adopted in giving the securities in detail, but they both go over the same ground.—*Ed.*

‡ Against vexation in these three shapes provision is of course already made in the existing system of law, whatever it may be—and the vexatious act being made punishable, secrecy is of course an accompaniment endeavoured to be given to it. But when hands by which the injury is inflicted are of the number of those which are armed with power, that power extends to the giving to the whole operation a degree of secrecy beyond any which could be given to it by ordinary and powerless hands: and for the maintenance of secrecy, even where power is irresistible, the avoidance of odium affords commonly an adequate inducement. By the arrangements proposed under these heads, secrecy will be found combated by instruments of elucidation of which none are everywhere in use, and of which some are not anywhere as yet in use.

§ If exercised by the sovereign himself, the nature of the case admits not of a remedy. But, if exercised by this or that functionary subordinate to him, a not impossible event is that this or that other functionary equally subordinate to him,—for example, a judicial functionary or set of functionaries, shall hold themselves warranted—on the supposition, that being unjust, the sovereign has no participation in it,—in declaring this supposition, and proceeding upon it accordingly: that is to say, unless and until compelled by irresistable means to know, that the sovereign himself is the person, or of the number of the persons, from whose will the vexation has emanated.

‖ This article is necessary to complete the description of depredations; the subject-matter of wealth is composed either of things or of the services performed by persons.

¶ To this head belong all measures of suppression or restraint, applied to public discussion, or to the use of the pen or the press, on the subject of political measures and men, or to communication on

Digitized by Google

9. *National debilitation.**
10. *Violation of private documents.*†

CHAPTER II.

PUBLIC OPINION THE SOLE REMEDY—PARALLEL BETWEEN THE PUBLIC-OPINION TRIBUNAL AND THE OFFICIAL JUDICATORIES.

SECTION I.

General view of the Public-Opinion Tribunal.

Thus much as to the disease; now as to the remedy: of the two only accessible remedies that the nature of the case admits of, the only one that belongs to the present purpose. For conveying a general idea of the remedy, a single word—*publicity*—may for the moment serve: but before the nature and operation of it can be conceived with any tolerable degree of distinctness and clearness, considerable explanations will unavoidably be necessary.

Publicity! but to what acts applied? Answer. In the first place to the acts of rulers: in the next place to the opinions formed in relation to them by subjects: publicity to the acts,—knowledge of the acts being necessary to the existence of the opinions.

The existence of such publicity being supposed, and the degree of it perfect, in what way does it contribute to the object in question,—namely the affording security against misrule? Answer. Be the acts of the Government ever so arbitrary, the subject many, in proportion as they form and make public their respective opinions, in relation to them, act in so far, in the character of judges: judges sitting in judgment over the conduct of, and in this way exercising rule over, the rulers themselves.

Exercising in any way rule over their rulers: how then is it that they can remain subjects? Answer. In the way of direct mandate and coercive powers;—no: in no such way can they give direction to the conduct of these same rulers. Yes: in the way of indirect and gentle power, or in one word, influence: for in this way do our children, at an age in which nature places them under the absolute dominion of their parents, operate on the conduct of those same parents. But the particular way in which the effect is brought about, may call for further explanation.

Operating thus as judges, the members of this same community may, in their aggregate capacity, be considered as constituting a sort of judicatory or tribunal: call it for example *The Public-Opinion Tribunal.*

Taken in its utmost latitude, this tribunal would include all of them without exception. But, of no question, on any occasion, can any such multitude, in such their capacity, by physical possibility, actually take cognizance. Those less than a certain age, and the infirm, for example, not to mention any other classes, cannot but be excepted. Only to a certain part of the whole number, and that perhaps generally speaking the smallest, will the physical faculty of taking cognizance of any such political question be confined. If then, all the members of the community without exception were to be considered as members of this same half and half imaginary tribunal, those who are not physically incapable of taking part in its deliberations, must be considered as constituting a committee of that same aggregate and multitudinous body—a committee invested

those subjects in the way of epistolary correspondence or personal intercourse by persons in any numbers.

* To this head belong all measures of suppression or restraint applied to the practice of openly carrying arms offensive and defensive: or that of being trained in the use of them in conjunction with other men in any numbers.

Say *openly:* for of arms secretly worn, the only purpose is individual assassination. It is not by daggers that the defensive force of a people against misrule can be augmented. For defence against malefactors no use can there be in any such concealment. As to the case of a whole people, kept in an oppressed state by an irresistible military force foreign or domestic, it is here noticed, but this is not a place for the consideration of it.

† To this head belongs what is sometimes designated by the inadequate expression of *seizure of papers.* This mode of oppression has for its subject such letters, memorandums, and other visible and tangible instruments of discourse, by the communication of which, to persons other than those for whose eyes they were intended, vexation in almost any shape and to any amount, in any one of an infinitely diversifiable variety of ways, is liable to be produced. So far as the only effect as well as object of the invasion is the furnishing evidence of a misdeed committed or meditated, the vexation, whatsoever might be the shape or the amount of it, could not with propriety be spoken of, by the appellation of *oppression:* nor yet where, as between individual and individual, of the portion of visibly expressed discourse thus dealt with, no other use is made, other than the causing it to be subjected to inspection for a judicial purpose, in the character or for the discovery of evidence: of evidence tending to give validity or invalidity to this or that claim of right.

But by vexation, committed in this shape by public functionaries without control, oppression to an indefinite amount is capable of being produced. On the occasion or on pretence of a search for evidence of a misdeed in this or that shape committed or not committed, writings of all sorts and in any numbers might be destroyed, damaged, carried off, or inspected: inspected and the contents divulgated. Commercial credit might be ruined, enmities excited, peace and reputation of families destroyed, and so forth. On pretence of search for evidence, alleged to be in the possession of the person in question, papers or other objects not found in his possession might by the authors of a pretended search be inserted among such as were found in it: the friendly deceit practised by Joseph upon his brethren might in this way be practised for a hostile and homicidal purpose.

Digitized by Google

with the powers of the whole: a committee in which, as in a sort of committee every now and then exemplified in the proceedings of the English House of Commons, as many of the members of the house as enter have voices.

Again, take this or that particular operation. Of those who, all of them, possess the physical capacity of entering on it, a certain portion only, and that most commonly the smallest portion, will actually take cognizance of it: if then, those who might take such cognizance are considered as constituting a committee of that same body, then those who thus actually do take part in the business may be considered as constituting a sub-committee.

The greater the suffering produced by any act of oppression, the greater, provided it has been made known to them, is the number of the individuals who, in the character of members of this committee, are likely to take cognizance of the affair in the first instance. The greater the number of these members of this committee, who having joined in the cognizance thus taken, pass condemnation on the deed, the greater the number of those other persons who on the authority of this report take cognizance, not of the affair at large, but of the conduct of the actors, whoever they may be, in the act of oppression, so far as to concur in the opinion—the judgment, the sentence of condemnation,—passed upon those oppressive agents in consideration of their oppressive act.

The greater the number of those who concur and join in the provisional sentence, the greater the number of those who are likely to concur and join in the definitive sentence. As to the sentence, whatsoever may be the individual gradation of punishment, the ultimate punishment which it is in the power of this tribunal to inflict on the oppressors, whosoever they may be, consists in the withdrawing from them altogether that obedience to the extent of which that of their power is correspondent and commensurate. The subtraction of obedience, suppose it universal,—the corresponding power is by the very supposition at an end. This same subtraction is according to the description thus given of it, a mere negative act. But in the production of the effect arrived at by it, positive acts directed to the same end have place or come to be exercised. The extinction of the life of the oppressor-in-chief, for example, may be the punishment indicated by the sentence; executioners, any number of the members appointed for the purpose, or even this or that single one of them. By the adherents of the oppressor, the corresponding sentence with the execution of it, will, of course, be objected to on the ground of irregularity. But to act against this word irregularity, some other will be found by the concurrers in and approvers of the sentence.

In England, for example, if the king were among the individuals upon whom the supposed sentence had been passed, and execution given to it accordingly, a natural and constitutional objection would be, that to render it regular and constitutional, an act, called an act of attainder, was necessary,—an act of attainder passed like every other act of parliament by the joint consent and concurrence of the King's Most Excellent Majesty, as well as that of the Lords and Commons of Great Britain and Ireland, almost all of them in one way or other in a state of dependence on his good pleasure; and that, His Majesty not having been pleased to give his consent to any such act, the sentences so passed and executed are thereby null and void. By any regular Tribunal composed of Judges placed by his said Most Excellent Majesty, this objection would be held valid: and on the individual by whom the sentence in question had so been executed on the body of his said Majesty, a sentence, including amongst other things the extinction of the life of this irregularly commissioned executioner, would accordingly be executed. On the other hand, by the member or members of the irregularly constituted Tribunal of Public Opinion, under whose authority the sentence of extinction against the Monarch had so been executed, the objection would as surely be overruled. On the part of this, or any other malefactor, it would have been perfectly regular for him to have given his assent to the sentence passed upon himself. But though perfectly regular, it is by no means usual. It is so far from being so, that if any such assent were waited for, it may be stated as a matter of certainty that neither to this purpose of extinction of life, nor to the purpose of any the slightest restriction, would any bar be opposed in any case to the utmost quantity of suffering which it would be, physically speaking, in the power of the supreme ruler to inflict on the individuals subject to his power, in the legal sense of that same imposing appellation.

In the above strain, for example, thought and acted the Members of that section of the Public-Opinion Tribunal, by whose warrant, by the denomination of a warrant by the Members of the High Court of Justice, the life of Charles the First of England was extinguished at Westminster in the year 1649.

Of this sort, among the punishments which it belongs to the power of the Tribunal of Public Opinion to inflict, is that which stands highest in the scale. But beneath it stand others in number and variety indefinite. Among them are—1. All obstructions to the exaction of contributions, the produce of which is placed at the disposal of the Sovereign: 2. All obstructions capable of being opposed to the execution of the judgments of the several regularly constituted Tribunals: 3. All modes of annoyance, by which, in retribution for the demonstrations of hatred and contempt received, demonstrations of correspondent hatred and contempt are rendered: 4. Invectives said and sung: 5. Invectives written and posted up: 6. Of whatever liberty is left to the subjects,

Digitized by Google

to the members of the community at large, by the laws and practices of the government,—use made to the purpose of opposing, and, so far as may be, frustrating these same laws and that same practice. All this while, be the quantity of suffering ever so enormous, so long as regularity, and nothing else is looked to,—all this while to the Acts of Government, by which all this misery is produced, on the score of regularity at least, nothing can be excepted. Of whatsoever is done by the superior authority of the State, or by any subordinate authority by its order, or with its allowance, in how great a degree soever productive of human suffering, and destructive of human happiness, regularity is an inseparable quality and accompaniment: irregularity of whatsoever is done by the Tribunal of Public Opinion, in opposition to anything which is done by the constituted authorities. Irregular it is in whatsoever degree it has the effect of diminishing the quantity of suffering produced by the regular Tribunals, and is in this, or any other way, productive of addition to the net amount of human happiness. In so far, then, as, by the ruling Members of this irregular Tribunal, their own interest is rightly understood, the option is throughout between regularity and happiness. By those by whom regularity is preferred to happiness, this same irregular Tribunal will be hated, even in so far as fear permits—despised, and everything done that can be done to diminish, and, if possible, annihilate its power.

Those who desire to see any check whatsoever to the power of the government under which they live, or any limit to their sufferings under it, must look for such check and limit to the source of the Public-Opinion Tribunal, irregular though it be, and, to the degree in which it has been seen, fictitious: to this place of refuge, or to none; for no other has the nature of things afforded. To this Tribunal they must, on every occasion, make appeal. To this Tribunal they must, on every occasion, give what contribution it is in their power to give: for do what they can, never can they give to it too much praise: never can they ever give to it enough: never can they give to it so much as, for the greatest happiness of the greatest number, it would be desirable that it should have.

In the assertion implied in the giving, as above, to a certain portion of the members of the community, the several denominations—Public-Opinion Tribunal—Committee of the Public-Opinion Tribunal—and Sub-committee of the Public-Opinion Tribunal—there is a mixture of the real and the fictitious. In this statement, what, it may be asked, then, are the points that are real, what those which are fictitious? Why with that which is real mix up anything fictitious? Of these two questions, the latter may with more convenience be answered first; say, then, from the necessity of the case: for of that which is real, it is not possible to give any clear explanation, but by the help of something which is fictitious. The imperfection is one that is inherent in the very nature of language. Too often is the language of fiction employed for no other purpose than deceit: but this case is not of the number. Not so much for avoidance of imputation, as for clearness of explanation, an endeavour will now be made to draw the line of separation throughout: to point out, in these appellatives, what there is that agrees with abstract truth,—what there is that is metaphysical and fictitious.

For this purpose, the plainest course that can be taken is to confront the scattered body thus newly placed upon the list of judicatories, with those to which the title will not, by any one, be refused: to bring them to view in conjunction, giving indication, all along, of their several points of agreement and difference under so many determinate heads: placing, of course, in front the ordinary sort of judicatory, and making it the standard of reference.

Section II.

Attributes of a Judicatory.

The more closely the nature of the Public-Opinion Tribunal is looked into, the more clear and strong will be the conception of its efficiency, and consequently its existence.

When announced, it will be apt to present itself as nothing more than the offspring of imagination and language. The cause and reason of this is, that on no occasion are the several members of it seen sitting altogether; nor in their official and judicial capacity are they so much as capable of sitting and taking part in the business at the same time, or in the same edifice or enclosure; or, when at a distance, of maintaining anything like a regular course of correspondence. It wears, therefore, the colour of fictitiousness, but it possesses the substance of reality. This will be rendered manifest in proportion as observation is taken of the operations, by the performance of which the ordinary judicatories, commonly so called,—those in the instance of which no one could think of contesting the denomination,—are characterized.

To a judicatory, as such, belong certain functions; these functions are exercised by the performance of correspondent operations. To a judicatory, as such, belongs a certain mass of power: namely, the power necessary to the performance of these same operations. To the will of the several members of every judicatory applies, moreover, a certain mass of ruling interest: and in the exercise of their power they will, of course, be guided by the direction in which their will is acted on by this same ruling interest.

To the head of ruling interest belongs that of pay, since the ruling interest by which they are respectively actuated, depends in a great degree on their pay, if pay they have: on the manner in which it is connected with their continuance in their situations, and the line of conduct therein maintained by them.

Digitized by Google

As to the operations or functions, they may be thus enumerated.

1. Receiving claims and accusations: claims referring to what is called the civil branch, *i. e.* the non-penal branch of judicature—accusations to the penal.

2. Receiving oppositions and defences,—oppositions to claims, defences against accusations.

3. Receiving, compiling, collecting, and storing, evidence, viz. in support of oppositions as well as claims, of defences as well as accusations.

4. Hearing or reading arguments, or say reasons, of parties, or advocates, or both.

5. Forming on each occasion an opinion, or say a judgment, with a correspondent will.

6. Giving expression to such judgment and will.

7. Giving execution and effect to such judgment and will.

Among different judicatories, it is evident, may these functions in various ways be distributed. But, to the attainment of the ends of justice, it is necessary that in some way or other they should be all performed.

Attached to these essential operations may be other incidental ones, such as entertaining applications for delay, and so forth; but to the catalogue of essential ones it will be found that the above belong, and that there are no others that do belong to it.

As to the word power, before it can serve to bring to view, in any distinct form, the attributes comprehended under it, certain particulars, serving as sources of division, will require to be brought to view: namely, 1, The several fields over which it exercises itself: 2, The means of efficiency—means by the use of which it gives to itself execution and effect.

1. As to fields of exercise. To the power of every efficient official judicatory, belong two distinguishable fields; 1, the local, which may also be termed the territorial, topographical, or geographical field: 2, the logical, termed also the metaphysical. In the logical may, moreover, be distinguished, 1, the corporeal subjects included in it, namely, the persons and things: 2, the incorporeal subjects, namely, the suits or demands of which cognizance is taken, *i. e.* the claims and accusations.

2. As to means of efficiency, they are the means of operating with effect on the above-mentioned subjects: namely,—on immoveable portions of territory, moveable things, and persons: on things by means operating on body alone, namely, physical force; on persons by these same means, with the addition of forces operating on mind, namely, prospect of punishment, (*i. e.* of eventual evil in any shape,) and prospect of reward. On the aggregate amplitude of these several fields and means of efficiency depends the aggregate amplitude, or say the magnitude, of the mass of power belonging to any official judicatory; in the same elements will be found the measure of the power of this unofficial judicatory—the Public-Opinion Tribunal.

As to *ruling interest*, it is a topic that will be apt to present itself as more new than agreeable when applied to an official judicatory; it does not, however, the less indisputably belong to it, as well as to this all-comprehensive, though unofficial judicatory, the Public-Opinion Tribunal; and in this one of its attributes will this all-comprehensive though unofficial judicatory be seen to possess its strongest title to regard. The interest of the Public-Opinion Tribunal—that is to say, of the aggregate number of its members—the ruling interest, can never be in discordance with the interest of the aggregate number of the members of the particular state or community in question: whereas, the interest,—whether we take the aggregate interest of the whole number of official tribunals, or their several particular and distinct interests; that is to say, the aggregate of the interests of the several members,—can never be in complete accordance with that same universal interest.

Such is the identity on the part of the real net interest: and in so far as correctly understood, and capable of being pursued, it is the net interest that, in every individual and in every aggregate of individuals, will, on each occasion, be the actual ruling interest.

As to the attribute of power, the existence of it will be more readily recognised in the gross, namely, by the contemplation of its effects, than comprehended in detail, by reference made to the corresponding elements in the power of a judicatory of the official kind. But to its being clearly apprehended and conceived, a glance at these details is indispensable. In the first instance, however, thus much may be remarked of it in the gross, namely, that by its effects the reality of the power itself is demonstrated, and by the reality of the power, the reality of the judicatory to which the power is ascribed and attributed; for of that which has no existence there can be no attributes.

Section III.

Constitution of this unofficial Judicatory.

To every official judicatory, the above several attributes will be allowed to belong without dispute. No less truly will they be seen to belong to the unofficial judicatory.

First as to the members. In this first point will be seen to lie the greatest, or rather the only difficulty. In this part of the picture, reality wears somewhat the air of fiction. Of the object designated by the appellation of Public-Opinion Tribunal, familiar as the expression is, the existence will be apt to be suspected of being no other than figurative, and merely nominal: on the other hand the name of it is not more perfectly familiar, than the existence of its power is universally recognised; and of an object, the power of which is

Digitized by Google

admitted, to deny the existence, would be self-contradiction. Even in regard to members, the only difficulty lies in the determination of the individuals to whom, on each occasion, the appellation can without impropriety be ascribed; and even on this point, the uncertainty may not unfrequently be seen shared in by the official judicatories.

Be this as it may, a function supposes a functionary—one functionary at the least; an operation an operator. Ere any account can be rendered of the operation of the unofficial judicatory, some individual or individuals must be brought to view, as and for so many members of this judicatory—members by whom the several operations are performed. At the head of these, as exercising the function in question in a manner the most conspicuous, sits the editor of a newspaper, in which the press, however legally handcuffed otherwise, is to the purpose of being capable of affording an example of this sort of judicature, practically free. Say, for example, an English newspaper. An Anglo-American United States newspaper is to this purpose legally as well as practically free; but it being in Europe less known, the English newspaper will be the more convenient standard of reference.

But of the unofficial judicatory, an English newspaper editor is but one member amongst millions. To show in what way he is the head, it will be necessary to show in what relation this one individual stands to the millions: in a word, of what different classes in relation to so many different purposes, this judicatory, taken in its totality, is composed; to show, in short, the composition of the whole judicatory.

Take any political community—the British Empire for example: of the aggregate of all the persons belonging to it, ruler and subjects taken together, will the Public-Opinion Tribunal be composed; and not only the inhabitants of the two islands, but the inhabitants of the several distant dependencies in the once four quarters—now five great portions—of the globe, must to this, as to other purposes, be considered as included. But not to speak of those who do not take a part in the consideration of subject-matters of the sort in question, a large proportion of the number—to wit children below a certain age, is composed of those who by physical incapacity are rendered physically incapable of taking such part. Distinction 1. Those members who belong to the Tribunal in respect of interest and future practice only, and those who belong to it in respect of personal practice.* Among those who belong to it, in respect of personal practice, may again be distinguished these classes—viz. 1. The merely speaking members; 2. Those who are not only speaking but also reading members; 3. Those who are not only speaking and reading, but also writing members; 4. Those who are not only speaking, reading, and writing, but also printing and publishing members.

The class of merely speaking members forms the basis of the several others: it cannot anywhere at any time be extinguished: if it could be extinguished, European governments are not wanting in which it would most assuredly be extinguished—at least endeavoured to be so. For instance, by cutting tongues out, it might be, and would most effectually be, extinguished. But tongues and the use of them are indispensable to the performance of the labour, without which the stock of the several instruments of felicity, by means of which the felicity of the ruling one and of the subruling few is reaped, could not be brought into existence. By any such extinction as this, the interest of these same rulers would, according to their conception of it, be not served but disserved. Accordingly no such extinction has ever yet been endeavoured at, or seems at all likely ever to be endeavoured at. Not so by the general extinction of those other classes, saving and excepting such a portion of them respectively, as under the direction of the supreme ruler may be necessary to be employed in the production and preparation of these same useful and necessary instruments, and securing him in the undisturbed possession of them, and in the application of them by him and for him to their respectively appropriate purposes.

So long as human beings come in presence of each other, it is impossible, generally speaking, to prevent their conversing with each other, and so long as they converse with each other on any subject, it is not possible to prevent them from conversing occasionally upon political subjects. In the interior of a palace, even without the trouble of cutting their tongues out, men may be converted into mutes. Accordingly in palaces, in which the art and science of legitimate rule has been carried to perfection, a transformation of this sort is known to have been accomplished. But in places other than palaces, for preventing conversation from taking any such dangerous direction, no means does the nature of the case afford, but the employment of spies. But here occur divers difficulties. Spies adequate to the purpose would require to be no less numerous than soldiers, and to be even more highly paid. And how well soever paid, among them—no one can say in how large a proportion—might be those who, seeing it necessary to deceive somebody, would prefer deceiving the universal enemy to deceiving their respective friends. Moreover, the more strict and effective the

* Not excluded from this judicatory are persons of the female sex as such. From the exercise of a share in the constitutive power, by means of votes in the election of the possessors of the supreme operative power, they, the greater half of the species, stand as yet excluded by tyranny and prejudice. But from a share in the power of the judicatory of judicatories, not even the united force of tyranny and prejudice, ever have altogether excluded them anywhere, much less will henceforward ever exclude them.

Digitized by Google

system of discipline employed in the extinction of the several classes of publishers, writers, and readers, the more apt would this policy be to become the subject of frequent, not to say constant conversation, among the classes of speakers, whose existence it would never be possible to extinguish.

If all the members of the political community in question be considered as being every one of them so many members of the Public-Opinion Tribunal, those who are, physically speaking, not incapable of acting as such, may be considered as constituting a standing committee of the whole body invested with the powers of the whole. What would, however, be more simple in conception, and would be more exactly conformable to direct truth, would be to consider the whole aggregate of those who are, physically speaking, not incapable of taking a part in the consideration of public affairs, as composing and constituting the entire judicatory: invested with the power in trust for themselves and the several other members of the community at large.

These, then, constituting the entire body, a committee of that same body will be the aggregate, composed of all those who, at any given point of time, do actually concur in taking cognizance of the affairs in question, or any part of them; and that, whether in the way of publication, writing, reading, or oral converse: and, of the general committee, so many subcommittees may be conceived as constituted—so many sub-committees as there are aggregates of individuals who, on any occasion, in any place, take actual cognizance of this or that political operation, to whatever part of the field of government it appertains.

Of these several subcommittees, the several individuals by whom, respectively, a literary work of any kind, bearing in any way upon any part of the field of government, is published, may be considered as so many presiding, or say leading members, or, in one word, presidents. But, among these presidents, a political newspaper editor, being the only one in constant authority, is, as it were, president of all these presidents; king of these kings; lord of these lords of the dominion of liberty and independence; real and not sham representatives of all who buy, and of all who read with sympathy, their respective publications, the product of their respective labours.

Among the infinity of subcommittees of the Public-Opinion Tribunal, as above indicated, three, as being the most efficient ones, require to be distinguished: these are—

1 The Subcommittee of General Superintendance. President, a newspaper editor. Other members, his customers and readers, and in particular his correspondents. These last belong to the catalogue of leading members.

2. Subcommittees of Justice, or say Judicature. Members, the several individuals who, being present in the several judicatories during the carrying on of the several businesses, take interest in what is going forward, in such sort as to form an opinion of approbation or disapprobation, in relation to any part of it.

3. Subcommittees of Religion. Members, the persons present at the several sermons or other discourses held on the subject of religion by the several officiating priests: also those by whom the several works on that subject are read or heard in places other than those which are appropriated to this sort of occupation.

In one and the same number of an English newspaper may commonly be seen the united product of the labours of a number of these subcommittees.

Thus much may, it is hoped, suffice for the purpose of illustration, and for the giving to our conception of the subject such degree of clearness, as the nature of the case admits.

Section IV.

Functions or Operations of the Supreme Unofficial, compared with those of the Official Judicatories.

The several operations included in this part of the business of an English newspaper, being thus taken, as and for a specimen and sample of the functions of a sub-committee of the Public-Opinion Tribunal, let us see in what way the mode in which these several functions, as thus performed by it, agrees with, and in what way it differs from, the mode in which these same functions are most commonly performed, in and by an official judicatory.

To the present purpose they may be enumerated as follows:—

1. Receiving claims and accusations.
2. Receiving oppositions and defences.
3. Receiving, compelling, collecting, and storing, evidence.
4. Receiving, and hearing or reading, arguments of parties litigant, or advocates.
5. Forming opinions or judgments on these, with correspondent *will*.
6. Giving expression to such judgments and will.
7. Giving impression to such expression.
8. Giving diffusion to such impression.
9. Giving execution and effect to such judgments and will.

Distinct in themselves are all these several operations, and, by the ordinary Judicatories, who have the time of other men as well as their own at their disposal, as well as the channels of communication at command, they are performed at different times, and in regular succession, as above displayed.

In and by the Public-Opinion Tribunal, a member of it not having, generally speaking, any channel of communication, or the time of any other person at his command, these several operations cannot respectively be performed but as occasion offers; and when occasion does offer, it must be made the most of, and the several operations, all of them, or as many as can with advantage, be performed at once.

Digitized by Google

Follow, under the above several heads, a few observations, having for their object the bringing to view the principal points of agreement and difference between the one sort of Judicature and the other.

1. Receiving accusations.*

In the newspaper in question, an allegation is made of misconduct in a certain shape, as having had place on the part of a certain functionary or set of functionaries: the accuser, whether the editor himself or a correspondent, makes to newspapers no difference. Here the function of receiving accusations stands exemplified.

2. Receiving Defences. Of the exemplification made of the exercise of this function, indication will be made presently.

3. On this same occasion, a correspondent perhaps makes mention of this or that particular, as having fallen within his own knowledge: the name though not signed,—having for the security of editor and printer, or not having, been privately communicated. Here the function of reception of evidence, and at the same time that of the impression of it, and that of the diffusion of it, stand exemplified.

At the same time, whether directly by means of appropriate and direct questions, or at any rate, indirectly and virtually by means of apposite affirmations as above, the party accused is called on either to confess the act thus indicated, with the inculpative circumstances, and at the same time directly or virtually to confess the culpability of it, or to deny the act, or some inculpative circumstance or circumstances belonging to it, or admitting what is above, to argue in justification of the act.

The next day, or next but one, suppose, the party thus called on argues in justification of the act; and at the same time either directly avers the having done it, or by his silence, or the turn given to his argument, virtually admits it: here the function of compelling evidence stands exemplified.

On the former day, intimation was moreover given of certain other persons, as having been percipient witnesses of the act, or this or that inculpative circumstance belonging to it, and as being thereby rendered capable, if so disposed, of becoming in relation thereto reporting, narrating, or say, deposing witnesses. Here a commencement of the function of collecting evidence stands exemplified.

Purchasers, in number more or less considerable, being in the habit of filing and preserving the numbers of the newspaper in question as they come out, here the function of keeping in store—in a word, of storing the stock of evidence in question stands exemplified.

4. With the evidence thus received, compelled, collected, and kept in store, is commonly at the same time mixed up, and thus received and kept in store in some proportion or other, matter on both sides bearing the character of argument: argument having for its object the bringing to view either the probability or improbability of the alleged act, or of the alleged inculpatory circumstances, or the impropriety or propriety of it or both together: each party, by the argument he delivers, directly or virtually calling for counter-argument on the other side. Here then the function of receiving arguments at the hands of parties litigant or their advocates, or both, stands exemplified. The function of reading or hearing these arguments—this mass of argument, together with the correspondent mass of evidence is, in this case, left to the purchasers and other readers or hearers of the newspaper, each one exercising it for himself, or this or that of his associates.

5 and 6. Having received from his correspondent the above-mentioned letter and thereupon the several other masses of evidence and argument above-mentioned, the editor in the course of the controversy forms and declares some opinion, or say judgment, of his own, provisional or definitive, in favour of the accusing or the defending side. Here the function of forming, and that of giving expression to, such opinion and judgment, stand exemplified.

The judgment, suppose, is a judgment declaring conviction, and passing sentence of condemnation on the party so accused. But in such judgment and sentence of condemnation, is included an opinion, that by the party thus condemned, a disreputable act has been committed: an act whereby he will be lowered in the estimation of other members of this same unofficial judicatory in an indeterminable and incalculable number, in consequence of which depression, he will in the natural course of things, be deprived in some sort and purpose or other of their good offices, and upon occasion even be exposed, in some sort or purpose, to positive ill offices at their hands: and in such judgment is naturally at least, if not necessarily and virtually included, the declaration of a will, or say, a desire that such shall be the result.

By this president and leading member of this subcommittee of the Public-Opinion Tribunal, by which cognizance is taken of this affair—by him, not to speak of others who agree with him—expression is given to the judgment so formed. But by others in uncalculable number, by whom no judgment is expressed,—a judgment on the subject—the like judgment suppose—is formed. But, in such instances the judgment being formed, though no expression is ever given to it, a correspondent will as above is naturally formed,—a correspondent will—whence result subtraction of good offices and performance of ill offices, as above.

7 and 8. From the newspaper editor the aggregate of this mixed mass of evidence and argument, together with the accompanying preliminary matter as above, and the expres-

* In the case of *a claim*, conception not being quite so simple, it may for the purpose of the present exemplification be put aside.

Digitized by Google

sion given to the judgment and will as above, receive of course impression and diffusion in the way of his business. Here then the several functions of giving impression and diffusion to the judgment and will, and to the expression given to them, stand exemplified.

9. In ways and by members of this same unofficial judicatory, in a number altogether out of the reach, not only of general perceptive enumeration, but of calculation, execution and effect will continually, and as it were of course, be given to the judgment in question, namely, by the consequent will and ill offices, positive and negative, as above. Here, then, the function of giving effect and execution to the opinion, or say the judgment in question, stands exemplified.

From a review of the above several functions or operations, may be formed a deduction of no small practical moment. This is, the prodigious importance, absolute and comparative, of the situation and functions of this president and leading member of so many subcommittees of this not the less supreme and all-comprehensive because unofficial judicatory: the importance absolute, and more particularly in a comparative point of view: comparison had with all other members of all other and whatsoever classes, as above-mentioned.

Next to him in the order of importance comes the author of this or that work belonging to some department of the field of politics—of that vast field, the whole of which lies within the dominion and is every day coming under the survey, of the unofficial functionary.

Section V.

Power of the Unofficial compared with that of the Official Judicatory.

I. Means of execution and effect. Among the elements constitutive of political power, this, though in the list of them it occupies the last place, is the first to be looked to, this being the effectual one, without a clear conception of which no clear conception of the others can be formed.

Of the means of execution and effect, the aggregate efficiency will depend, 1. upon the number of persons disposed to concur in contributing to the effect; 2. partly upon the internal force, physical and mental, of each; 3. partly upon the quantity of external physical force at the command of each, *i. e.* of the sorts of things capable of giving increase to human physical force, such as arms, ammunition, &c.; 4. partly upon the facility of acting in concert; 5. partly upon the smallness of all opposing force; 6. partly upon the magnitude of the evil, to which the possessor of the power has the physical faculty of subjecting the individuals subject to it in case of non-compliance and obedience; 7. partly upon the comparative magnitude of such evil, viz. as compared with the magnitude of the evil to which, in the case of a rival possessor of power, such rival is able to subject the common subject or subordinate.

Compare now, under these several heads, the condition of the unofficial judicatory with that of the official ones considered separately or in the aggregate.

1. In respect of the number of persons disposed, in the character of agents, to concur in giving execution and effect to the opinions, judgments, and wills in question. In this particular the advantage which the unofficial judicatory possesses, when compared with the official judicatories, all of them put together, is at first mention manifest. Of those by whom on any occasion the judgment and will of the former have been formed, and those whom it finds disposed to concur in giving sanction and effect to them, some with more energy, others with less, the number is exactly the same; it is the aggregate number of the whole community.

2. The same may be said of the aggregate amount of internal force, physical and mental.

3. The same may be said of that portion of the aggregate means of execution which is composed of objects belonging to the class of things: for to the aggregate of the individuals above-mentioned, as belonging on this occasion to the class of persons, belongs the aggregate of the individual objects belonging to the class of things.

6. * So likewise as to the *magnitude of the evil* to which in quality of possessors of the power, that is to say, of the above-mentioned elementary ingredients of it, the members of the judicatory in question have the physical faculty of subjecting those at whose charge the execution and effect in question are to be given in case of non-compliance or disobedience. For in this magnitude is comprehended, without any exception or limitation, the aggregate amount of all the evil to which, in what shape soever, it is in the power of man to subject man.

7. So likewise in the case of competition, as to the magnitude of the evil to which the members of this unofficial judicatory, and the members of the several official judicatories, its rivals, are capable separately and collectively to produce at the charge of any individual or individuals considered in the character of their common subjects.

II. Personal branch of the corporeal field of the power of a judicatory.

Under the head which applies to members, has been brought to view the all-comprehensiveness of this branch of the unofficial judicatory, as compared with any official judicatory or judicatories; not only sharers of this power, but contributors to its magnitude, because so many ready executors of its will, are the members of this unofficial judicatory every one of them. Under that same head has also

* For No. 4 and 5 see below, as to the points in which the unofficial is inferior to the official judicatory.

Digitized by Google

been brought to view the faculty which in each political community this unofficial judicatory has of receiving reinforcements to an unlimited amount from the members of the like judicatories in the several other political communities having place on the surface of the globe.

Compare this element of its power with the correspondent element of the most powerful official judicatory in the same political state. The power of the official judicatory will be still the inferior: no such faculty of receiving reinforcements to an unlimited amount from other states belongs to it.

Correspondent to the extent in respect of the number of the individuals of whose force the force of this aggregate is composed, is the extent of the number of those on whom the force is capable of being exercised. On the one hand, all enter into the composition of the public force: so, on the other hand, all behold all in a state of subjection to this same public force.

III. Incorporeal field of jurisdiction of a judicatory—extent of the classes of suits or causes appertaining to it, *i. e.* of the rights on which claims may be grounded, and the wrongs on which accusations may be grounded.

In the case of the official judicatories, the rights which their field of jurisdiction embraces are those only in which, proceeding according to the system of procedure pursued by them, more good than evil, with reference to the interests they are employed to support, may, it is supposed, be produced by their interference; and so in the case of accusations. By the unofficial judicatory cognizance is taken, not only of all these same rights and wrongs, claims and accusations, but also of all others in which the interests of the community, in respect of the several individuals included in it, are, in the opinion of the several members of the standing committee of the judicatory, and of its several subcommittees, as above, concerned.

Thus much as to the points in which this unofficial judicatory is superior to the official judicatories. Now as to those in which it lies under a disadvantage.

1. In the first place, taken in its totality, it labours under a division—a constant and invariably established division, in respect of interests. Two parties constituting so many sections—the democratical and the aristocratical, are destined, in all communities and at all times, to have place in it. The interests of the few—the extra-opulent, and therefore, if by no other means, the powerful few, being in a state of opposition to that of the many, that of the consuming class which produces nothing to that of the producing class, which produces more than it consumes,—hence it is that, whatever power is in the hands of the aristocratical class, over and above that which is in the hands of the same number of those of the democratical class, constitutes a sort of disease with which the body politic, taken in its totality, is afflicted.

By the original structure of its constitution, this body is destined to labour under two distinguishable diseases, having for their cause or causes the inward resistance of two intestine sets of enemies; one set composed of the ultra-indigent class of malefactors, who, being as such weak and powerless, and objects of general disgust, are thereby exposed to punishment: the other, composed of the ultra-opulent, who being as such powerful and objects of general respect, are thereby exempted and preserved from punishment. Of both of these, depredation is the characteristic occupation: by the ultra-indigent it is ever acted on upon a small scale, by the ultra-opulent upon the largest scale.

Intestine depredators of this class being innate accompaniments of the constitution of every political community, they exist, nor can they ever cease to exist, in a representative democracy, even though constituted in the purest form possible. In that form they may be kept under in such sort as not to be productive of any considerable mischief; but they cannot, consistently with the security of the whole, ever be altogether extirpated. Thus stands the matter in the only sort of government which has for its object the greatest happiness of the greatest number: for as to all others they have for their object the greatest happiness of the smaller number, at the expense of that of the greater.

In a monarchy, at the head of the highest predatory class is stationed the arch-depredator the Monarch: a creature in whose devouring and consuming maw, for the small chance of giving increase to the felicity of that one being, the substances of thousands and tens of thousands of others whose claims are as good as his are consumed.

The analogy between the innate disease of the body politic, and one of the diseases which, in the body natural, though frequent, is but casual, cannot have escaped the observing eye: in the class of malefactors so called and treated as such, may be seen the *ascarides* by which the several parts of the intestinal canal are occupied and infested: in the higher parts—in the aristocrats—may be seen the *teretes*, the smooth and polished sort, as the name imports: in the monarch the solitary worm or grub, in French *ver solitaire*, no constitution being equal to the endurance of more than one, the extraction of which is at once so difficult, so perilous, and yet so necessary. An emblem is not a proof, nor is it here meant as such; but if furnished by the nature of the case, and happily chosen, it will contribute clearness and strength to the conception, and for this purpose alone is it here brought to view.

Happily, the disease, such as it is, is in a particular degree that of infancy: sooner or later the body politic, if not killed by it, outgrows it. Every addition made to the number of readers is an addition to the number of persons capable of reading books on political sub-

Digitized by Google

jects, and of so becoming members of sub-committees of the unofficial Judicatory: while by the same means an addition is made to the number of persons by whom discourse is held on that subject in public, or at any rate, in private, and consequently to the number of sub-committee-men, as above. Every addition made to the number of persons becoming inhabitants of towns, in contradistinction to the being inhabitants of the country, separated from one another by distances more or less considerable, becomes an addition to the number of readers of politics, as above, or at least, to the number of hearers of political discussion.

Every addition thus made to the number of the persons habituated or disposed to the constituting themselves members of these unofficial committees, is an addition made to the number of those capable of taking cognizance, and likely to take cognizance of any appeal made to this tribunal by any members of the Government,—by any official functionaries when disagreeing with one another. By every such disagreement an addition is, therefore, naturally made to the power of this Judicatory—of the only body, the interest of which is not in discordance, but in accordance with, as being the same thing with, the interest of the greatest number of the members of the political community in question, whatever it be: even by every verbal discussion held between man and man, among the people at large, on that same subject, an appeal of this sort is made. Accordingly, by every such disagreement, so as the subject-matter and the particulars of it do but transpire, a service is rendered to the public interest—to the greatest happiness of the greatest number. No such service is commonly intended, but how far soever from being intended, it is not the less rendered.

Of such disagreement the causes are happily not a few.

1. In a monarchy a disputed succession is liable to have place.

2. A minority—the nonage of the monarch.

3. The manifest mental debility of the monarch, whether from old age, permanent bodily ill health or mental derangement. Manifest it must be, and undisguiseably so, to constitute anything that can be regarded as a particular, and incidental, and extraordinary case: for as to intellectual inferiority, comparison had with the ordinary herd, it is among the necessary results of the situation itself.

4. Between any two branches of the monarch's family, any disagreement in which the monarch takes, or is thought to take a part.

5. A disagreement between the sovereign in possession and the monarch in expectancy,—between the monarch on the throne and the next heir-apparent or presumptive.

6. Disagreement among the members of an administration, or as between the members of the existing administration, and the other men of rank and opulence, who are habitually collected within the field of the sovereign's observation.

In a mixed monarchy, the existence of disagreement between the constituent parts of it is of the very essence of the species. True it is that another property belonging to the essence of the species is the having a bond of union, a sinister interest in which they share—a sinister interest acting in evident opposition to the interest of the greatest happiness of the greatest number: and by this unity of interest, the government may, for a length of time more or less considerable, be kept from dissolution. Not less true is it, however, that in a government of this species, not less considerable are the causes of disagreement that have place.

If, between the power of the monarch and whatsoever power there is by which his is kept in check, the limits are not sufficiently defined, thereupon come contentions between the one power and the other.

So, if between two powers subordinate to that of the monarch, if so it be that the monarch takes a part on the one side or the other, which is what can scarcely fail to have place.

By a certain degree of prudence, disagreement from any one of the above three causes may be kept from breaking out: one cause, however, there remains, which is of the essence of the species, and which cannot by any human prudence be at any time altogether excluded. This is the competition for power as between party and party in the class of statesmen.

The matter of good in the shape of matter of corruption is, suppose, even the whole of it in the hands of the monarch, or at his disposal. Still, be it ever so vast, and be his desire of satisfying everybody ever so ardent, to give satisfaction to that desire, is at all times plainly impossible. So far from decreasing, as the quantity at his disposal, and accordingly, disposed of, increases, the aggregate amount of the appetite increases in that same ratio: the more there is to be had of it, the greater is the number of those, each of whom beholds for himself a probability of obtaining a share of it.

Thus then, between the party by whom this mass is shared (including those who, by their means, are in certain expectation of succeeding to a share in it) on the one hand, and the party to whom, neither in possession nor in immediate expectancy, is any share in view, strife, constant and interminable, has place,—constantly is the excluded party occupied in forcing itself in. For doing so it has no means but that of preferring against the party in possession, accusations, matter for which never has been, nor in such a form of government ever can by any possibility be wanting. But for the bringing and prosecuting these accusations, there exists but one possible tribunal, and this is—the Public-Opinion Tribunal.

Digitized by Google

Difficult, however, is the game which has at all times to be played by the corruptionist in expectancy. Otherwise than by appeal to the power of the unofficial Judicatory, in no way can he do anything towards the forwarding of his wishes. But to carry on any such appeal is to act as accuser, either of the functionaries who act under the form of government, or of the form of government itself, or both. As to the pointing of the accusation against the individuals their rivals, if that were all, in this it is not in the nature of the case that there should be anything that is not perfectly agreeable to them: what is thus aimed at is all profit, no loss. But under such a government the utmost mischief that is ever done beyond that which the government itself affords a warrant for, is in comparison with that which is done with a sufficient warrant from the form of government very inconsiderable. Depredation, and with it oppression in every other imaginable shape, may be carried on to any extent, and yet nothing be done in which condemnation in any shape is passed by either the letter or the spirit of the law, or the usage of government in or under it. Meantime that same load will be at all times pressing, and with ever-increasing weight; and those men being, by their hapless condition, condemned to keep up the continued profession of being friends to the people, no sooner does any particular instance of misrule in either of these shapes come to light, than all eyes are turned to them in expectation of their taking up the accusing part. In truth, the depredation and oppression exercised, having all of it the form of the government for its cause, it is never possible that the connexion between the effect and the cause can escape all eyes.

2. Second point of disadvantage—comparative incapacity of acting in concert.

Of this disadvantage there are two sorts of causes, the one natural, the other factitious.

Of the natural causes, the radical and principal one is *local distance*. It presses, of course, with particular weight on the condition of the inhabitants of the country, as compared and contrasted with that of the inhabitants of towns. In both cases its pressure is in the inverse ratio of the density of the population, and, as between town and town, in the inverse ratio of the number of inhabitants in each.

Of this cause the efficiency is capable of being counteracted and disturbed, by every circumstance by which either facility is given to the means of communication, or a counter-advantage afforded by means of profit in a pecuniary or any other shape, from frequent intercourse. By water carriage, for example, whether it be by sea or inland navigation that the facility is afforded,—by mutual advantage in the way of trade, the counter-advantage is afforded.

Of this same disadvantage the factitious causes are those which are produced by prohibitions and restrictions imposed by governments.

In every government but a democracy, the interest of the ruling few being in a state of opposition to the general interest, the consequence is, that in every species of government but that one, the class of functionaries beholds in the Public-Opinion Tribunal not a support, but an adverse power: a power capable of becoming superior to its own, capable not only of opposing limits to it, but of extinguishing it, and commonly the only one that is so: the only one without exception in the supposition that the political state in question has nothing of the sort to fear from any foreign State or States.

Hence, consequently, with the governing body of every State but that one, it is a constant object to throw in the way of such communication, so far as applied to political purposes, *i. e.* so far as applied to the formation of subcommittees of the unofficial Judicatory in question, every difficulty possible.

In the course of these endeavours it finds two natural interferences and difficulties: the odium attendant on it, and the obstacles thrown in the way of communication for such transactions as are regarded as being serviceable to its interests, and as such approved of.

As to the odium, it will be in intensity and extent exactly in the ratio of the degree in which the qualities of probity and intelligence have place in the community. By no government which is not an enemy, an uncontrollable enemy, to the rest of the community, can any such endeavour be ever employed: by every such endeavour an avowal is made of such enmity, consequently of such inaptitude, and of its being the interest of all men subject to it to put it down with all possible speed, and by whatsoever means appear to be at the same time the most efficacious, and in the shape of evil in all shapes least expensive: an avowal not in words, it is true, but in deeds; in deeds by which of the state of the agent's mind on every occasion evidence is afforded to such a degree conclusive, that the most probative that in the nature of the case can be afforded by words alone, shrinks into insignificance; and, in truth, sinks into nothing at all when opposed to the above-mentioned practical evidence.

The other impediment consists in the difficulty of preventing or obstructing communication for this unacceptable purpose, without preventing or obstructing it in its application to others that are regarded by the government as serviceable to its interests, or even necessary to its existence.

Take, for instance, the English Government, with its Tax upon Newspapers, An. 1801, £200,000; do. An. 1821, £400,000.* In any coolly reflecting mind, no doubt can have place that were it not for this counter-consideration, every newspaper, the editor of which acts in

* The sum realized by the stamp-duty on newspapers, for the financial year 1840, was £238,394, the duty having been reduced in 1836, from 4d. (with a discount of 25 per cent.) to 1d.—*Ed.*

Digitized by Google

the character of leading member of a subcommittee of that Public-Opinion Tribunal, would long ago have been extinguished. The odium—had that been all—the government would have been content to subject itself to; but the odium with the loss of so large a sum added to it, and at a period of so much financial pressure and difficulty, would have been decidedly more than could be afforded to be paid even for so mighty and decisive an advantage.

CHAPTER III.

NOTIFICATION AND PUBLICATION IN REFERENCE TO SECURITIES.

SECTION I.

Subjects of notification, and thence publicity.

1. Ordinances. 2. Transgressions, or any violations of those same ordinances. 3. Suffrages, or opinions formed by the several members of the Public-Opinion Tribunal, on the subject of or in relation to some transgression, as compared with those same ordinances.

Transgression supposes something transgressed; in the instance here in question that something is something having or designed to have the authority of law.

1. In the first place come the several *ordinances*, of which misrule in each of the several shapes against which a security is by this system endeavoured to be provided will have been a transgression: ordinances, or supposed rules having the effect of ordinances—of ordinances interdictive of vexation and oppression in all its several shapes. If at the time of giving establishment to security in those several shapes, ordinances adapted to the purpose are already in existence, it is well; if not, fresh ordinances for the purpose must in this case be provided.

2. In the next place come whatsoever instances of transgression happen to take place. If none, so much the better; the ordinances have in the completest manner possible fulfilled their purpose. If any transgressions within the law in question have had place, the number of them being given, the greater the number to which notification and publicity have been secured as compared with the total number that have had place, the better.

3. *Suffrages.* Understand by suffrages, the opinions produced in the minds of the several members of this same tribunal by the cognizance of the several transgressions. As applied to persons taking cognizance of the several transgressions, the degree of publicity will be as the number of their suffrages.

Note, that in the number of the members of this same tribunal, is included the number of all those on whose obedience or will depends the effect, of the several general salutary tutelary ordinances by which vexation is prohibited, as also of any particular acts or particular ordinances, in consequence of which any acts of vexation and oppression are exercised in violation and transgression of these same general and salutary ordinances. Power on the one part is constituted by and is in greater or less proportion to obedience on the other. It is in the direct ratio of the obedience, and in the inverse ratio of resistance. But the greater the number of the members of the whole community to whom the existence of an act of oppression has been made known, the greater is the number of those by whom, on the occasion of an endeavour to exercise other acts of a similar nature, supposing the first act notified to them, not only may obedience be withholden but resistance opposed.

Rule: abstraction made of the several degrees of influence possessed—influence of understanding on understanding, and influence of will on will included, the actual power of the Public-Opinion Tribunal will be as the number of the suffrages, actually declared in the minds of the several members: its power, as supposed by other persons, and, in particular, the several functionaries to whose transgressions it is the object of the securities to oppose a check, will be as the number of the suffrages which they expect to find formed and delivered.

This influence with its several possible degrees it may be said may be laid out of the account altogether. For of the persons on whom by possibility it is capable of being exercised, the only persons here in question are the members of the political community in question, considered in the character of members of the Public-Opinion Tribunal belonging to it. Thus, accordingly when considered in a general point of view for the most part does the matter stand. One point however there remains in relation to which the sort of influence in question is capable of having a distinct operation. The suffrages, suppose, of all the members of this tribunal take the same direction, they being all of them pronounced in condemnation of the oppressive act in question. Therefore, as between suffrage and suffrage, it makes no difference which of them was the result of a self-formed opinion—which of them the result of an opinion derived from the influence exercised on the mind in question by that of some other member: exercised whether on will, or on understanding, or on both together. But, though, by the supposition, the direction taken by the suffrages is the same, and the ultimate number of them, by what cause soever produced is the number in question, yet the degree of energy with which upon occasion they may respectively be disposed to act in conformity to these same suffrages may be to any amount different: and in each case this degree of energy may be greater or less according to the nature and force of the influence received.

Note, that to simplify the conception, the direction taken by the suffrages in question is, on this occasion, supposed to be the same in the

Digitized by Google

instance of every one of them. But as by this supposition the subject of these suffrages is in every instance some act of oppression exercised by the sovereign or individuals, there is nothing in this supposition that seems to be in any very considerable degree wide of the truth.

So much for the several subject-matters to which the act of notification may have need to apply itself. Now, as to the several successive operations, the performance of which may be necessary to the production of the effect—of the effect, by whatsoever name designated, whether notification or publicity.

These preparatory operations will be in a considerable degree different, according to the nature of the subject-matter, according as it comes under one or other of the three above-named denominations, namely, ordinances, transgressions, or suffrages.

Section II.

Notification, with respect to ordinances.

First, let them be supposed already in existence, and possessed of binding force.

If, so far as regards the purpose here in question, they are already present to every mind capable of taking cognizance of the matter, it is well. Unfortunately, there is not anywhere, on the surface of the globe, any country in which this sort of omnipresence, or anything like it, has place; not even in that country, the Anglo-American United States, in which the productions of the printing-press are most extensively dispersed: much less in Northern Africa, where even the instrument itself has never yet been in use.

Necessary to the existence of an ordinance in a binding state are three distinguishable operations: namely, scription, sanctionment, and registration.

1. *Scription.* By this understand the act of composing and committing to writing the matter in question.

2. *Sanctionment.* By this understand the investing it, with binding force, by some person or persons generally recognised as being possessed of a correspondent power.

3. *Registration*, or say recordation. By this understand the depositing and keeping, in some appropriate receptacle, the individual instrument to which the Act of Sanctionment has been applied. But for this the correctness and even genuineness of all copies, written or printed, might stand exposed to doubt and dispute.

Minute and useless will the distinction thus brought to view be apt at first sight to appear. Upon a second view nothing, it will be seen, can be farther from being so. Scarcely will that country be seen in which, throughout a vast and indeterminate portion of the field of action and legislation, an operation so essential as sanctionment will not be seen wanting to that matter to which is given nevertheless the name and binding form of law.

Thus far ordinances, appropriate and adequate to the nature of the exigency, have been supposed to be already in existence. If so, it is well. But, suppose the state of things to be a contrary case, what then is to be done?

Case 1. In relation to the matter in question, yet no ordinance of the above description in existence; but in the case of judicial decisions, the standard of reference, composed of anterior decisions, or inferences deduced from them. In the European governments, with the exception of the few instances, if any, in which codification has had place, such is the state of the rule of action, when it is in the state of what is called common law, or unwritten law. On most parts of the field of law, a quantity of matter has been written—written by men not invested, or so much as pretending to be invested with the legislative authority; and out of this huge and shapeless mass of writing, the judge on each occasion makes choice of such portions as appear to him best adapted to his purpose; to the purpose which is most agreeable to him, whatever it may happen to be. In this state of things, singularly unfortunate, if not unskilful, must that judge be who, out of so rich a granary, fails, on any occasion, to find that which is most agreeable to his wishes, whatsoever they may happen to be—to his wishes, guided, as they cannot but be, by what at the moment he looks upon as being his interest.

In the countries in question, if I understand the matter right, some of those memorials have been collected, which in England, over so large a portion of the field of thought and action, occupy the place of law. I mean that sort of matter which consists,—of statements of cases by which judicial decision has been called for, the particular decision pronounced in each case, and the general positions which have been brought forward by the judge in support and justification of his particular decision,—or of such general positions as, in the way of inference, have been deduced from it by men *colenter dissertantes*—rulers not invested with any such authority as that of a judge.

Case 2. The standard of reference referred to in judicial decisions, composed of inferences drawn, not from former decisions, but from an original standard, composed in a time of remote antiquity.

In the country in question, the standard of reference is, it seems, of this sort, and consists of the matter following:—There stands the Koran, the work of Mahomet, the universally acknowledged standard of opinion and practice in all matters of religion, as well as law. But, for a great portion of these particular cases, to which the occurrences of life are continually giving birth,—in this book, the matter being for the most part of a nature extremely general, is not capable of an application particular enough to serve as an adequately determinate guide. Influenced by this view, different persons, without concert with each other, have

Digitized by Google

at various times set themselves to work to fill up the vacuities, all of them agreeing in the homage paid to the general positions discoverable in the sacred text, but differing from one another in no inconsiderable degree, in respect of the inferences drawn from these important positions, of which, as being included within them, application has been made. With reference to the sacred text, these works of inferior authority stand in the relation of commentaries. Throughout the dominion of the Koran, four of these commentaries have obtained the pre-eminence over all the others. Such is the degree of that pre-eminence as to have given rise, as it were, to two classes of commentaries; commentaries of the first order, and commentaries of the second order. Those of the second order being not exclusively, at least, commentaries on the sacred text, but commentaries upon those of the first order. Commentators of the first order, four as above. Commentators of the second order, not as few as seven hundred.

Though clear of confusion from that source of which indication has been given, as above, in the case of the European, and especially the English Books of Reports, and Treatises deduced from them, the eastern system fails not, however, to labour under very obvious, and such as cannot but be very grievous inconveniences.

In the first place, no one of them having taken for its object of pursuit the greatest happiness of the greatest number, none can, except by accident, have made any clearly defined provision for it in the course of such arrangements of detail as are to be found deducible from it.

In the next place, in opening out the thread of inferences, they have all of them taken, on various occasions, courses more or less different.

From all these diversities, two evil consequences, to an extent more or less considerable, cannot but have taken place. So indeterminate, in this or that case, is the bearing of some or all of these previous commentaries upon the case, that the judge, be his probity ever so great, finds more or less difficulty in determining in what manner he shall make application of them to the case.

The other consequence is, that amidst such diversity the judge, in so far as the union of disposition and opportunity produces, on his part, an inclination for corruption, seldom finds any difficulty in gratifying it.

With regard to aptitude of phraseology—aptitude of phraseology on the part of the rule of action, the source of security on the part of the members of the community,—thus much may with confidence be asserted, with reference to the most aptly penned codes of European law; namely, that, in respect of determinateness of designation, as well as aptitude, with relation to the only proper end of legislation, the greatest happiness of the greatest number, they are in a deplorable degree deficient. Continuing to apply the words which custom has applied to the several occasions, on each occasion the assumption they proceed upon is, that of the word in question the import is adequately determinate,—and scarcely, perhaps, in a single instance is that assumption true.

If such is the case in the instance of those bodies of law, the authors of which, during the penning of them, set and kept before them, all along, a determinate object of pursuit, namely, the greatest happiness of somebody—the greatest happiness of the Monarch whose power was employed in giving birth to them and binding force; still more assuredly must it be the case in the instances in which the rule of action has, from time to time, been spun out, in the way of inference, from a rule which, whatever may have been the talent employed in the making of it, was yet of a mixed character; having something of religion in it, and something of law in it, with here and there a passage of history; springing the whole texture of it out of the occurrences of the day, and that day a very remote one with reference to present days, the state of society being, at the same time, in a great variety of particulars, widely different from what it is at present: widely different, and, amongst other points of difference, far less diversified.

Be the inquiry, however, ever so pressing, be the demand for new and precise definition of binding terms ever so urgent, everything cannot be done at once. With the stock of those terms, whatsoever may be the extent of it, with this stock of instruments, in the penning of the proposed securities must the scribe content himself, putting them to use in the best manner he is able.

In the character of a guide to Judges, the necessity of a collection of ordinances has just been brought to view,—of ordinances in the form of ordonnances,—of an all-comprehensive collection, covering the whole field of Legislation, and putting an exclusion upon every standard of reference that is not in that exclusively adequate guide.

But if necessary even to the Judge,—to the functionary to whose function it belongs to decide upon the conduct of the members of the community at large, pronouncing that decision which never can be pronounced without producing suffering in some shape or other from the lowest to the highest degree,—to a party or parties on one side or the other,—how much more necessary must it not be to an individual in the situation of one who every day of his life is exposed to the danger of being party to a suit for the want of being able to have access to a document which would enable him by anticipation to preserve himself from the sufferings which otherwise cannot but await him at the hand of the Judge.

If necessary to the right termination of these afflictive processes called causes or suits at law, how much more strictly necessary are they

Digitized by Google

not to the prevention of them. Without any such forewarning and trusty instructive guides, a termination in some way or other, these courses of suffering cannot but receive; but by no other means than these means of timely information can they be anticipated and prevented.

It may be matter for consideration whether to this fundamental and all-important institution of rational government, the form of a charter—the form of a declaration of rights, or the form of a contract should be given.

If obtainable, the form of a contract will unquestionably be the more beneficial: whatsoever securities are afforded will thus be fixt upon the firmer basis. The case of a charter remains always more or less exposed to one cause of failure: being the free and sole act of the Sovereign, whatsoever is granted by him on any one day may be taken back by him on any other: when he granted it, it was on the supposition that no bad consequences would result from it: but that supposition being disproved, necessity compels him to revoke it. To this effect are the words which at any time may just as easily be uttered as any others of the same length and number: and wheresoever and by whomsoever in the situation in question uttered, no want of voices to echo them need ever be feared.

So much for charters. Charters the people in question cannot have been much used to. Contracts—compacts—all people are more or less used to: more or less in the use and expectation of seeing them kept: and, at any rate, of regarding the infraction of them as an act of injustice, and a reasonable cause of displeasure and discontent: a reasonable cause for endeavour to obtain remedy.

In the case of a charter, if it be regarded as really obligatory, there is but one party on whom any obligation attaches: in the case of a contract, there are two parties: the people forming one of them. If then the contract form be the form employed, consistency would seem to require that, on the occasion of the solemnity from which it appears to derive its sanction, there should be given by and on the part of the people, thanks to the Sovereign for his entering into his part in it:—thanks with acclamations. Thanks to the Sovereign—to God—to the prophet—to everybody—nothing of this sort need be grudged. But on their part, if anything, what more can be done with safety and advantage? Promise to obey him and all his descendants to the end of time? this would be too much: too much even although, on the part of those potentates, the condition of their performing their part of the contract were attached to the promise on the part of the people. For—what if another form of government should come to be regarded as in a greater degree contributory to the greatest happiness of the greatest number? Promise to obey his descendants so long as the contract were on their part kept inviolate, and so long as Monarchy continued to be the form of Government? This is exactly what seems desirable: but unfortunately, the more desirable on the one part, the less likely to be acceded to on the other.

In the case of England, the Whig Monarchists who brought about the Revolution in the time of James II. saw the advantage attached, as above, to the contract form; and in their arguments employed it accordingly. Their contract, however,—the *original* contract they called it—was a mere fiction: and of its being a mere fiction an evil consequence was—that, on each occasion, the terms of it remaining to be feigned,—they made them whatsoever seemed to them most advantageous to their own particular interests. But, in the case here in question, there would be no fiction, and there being two contracting parties to this contract, the terms of it might, by mutual consent of both parties, be changed at any time. So long as the terms were kept by the Monarch, the people would not be likely to feel much inclination to change: but, supposing them at any time infringed by him, it would be for them to make themselves amends, and provide for that purpose whatsoever security seemed to them most efficient: for example, the change from the mixed Monarchy to a Representative Democracy: and for the bringing about such change, the securities here in question would prepare them, by giving them power in every shape.

Section III.

Means of Multiplication of Ordinances.

In the country in question, written discourse, though not printed discourse, being in use, of whatsoever ordinances are in force as such, copies, one or more, cannot but be in existence somewhere. In the metropolis of the country of course. In the seat of the principal judicatory of the country of course. In the case here in question, the first operation therefore that requires to be performed is multiplication. For this purpose the newly invented instrument, called the lithographic press, seems for a beginning preferable to the ordinary printing press, not that there should be any reason why either should put an exclusion upon the other.

The advantages which at the outset it presents itself as in possession of are the following:

1. It is by much the cheaper.
2. It requires for the production of the effect a much less numerous association of Arts, and thence of different artists.
3. Being with difficulty distinguishable from ordinary manuscript, the use of it will be less alarming than the use of the printing press, to artists who at present are employed in the transcription of manuscript writing.

On the occasion of this as of every other mode employable for the abridgement of human labour, an effect which can never be too scrupulously attended to, and which at the

Digitized by Google

same time has been almost universally turned aside from, is its effect on the interest—on the very means of subsistence of the working hands, the whole of whose subsistence is derived from the practice of the art in its present state. In various countries of Europe, in England more perhaps than in any other, prodigious is the mass of misery that has been produced by this means.

First branch of the evil, the distress of the labouring hands whom the introduction of the new art causes to be dismissed, and thus deprives of the means of subsistence. Second branch of that same evil, suffering in the shape of pecuniary loss and other shapes, sustained by those who, trusting to profit by the new art, dismiss in a proportion more or less considerable those hands whom they were wont to occupy in the course of the old established one: suffering, namely produced by the hostility of those who are thus deprived of the means of subsistence,—hostility exercised under the notion of its being in exercise of retributive justice.

To the great capitalist, the sufferings of these his discarded servants, to how many hundreds soever they may amount, has, generally speaking, been of little or no importance. But to no one of all these human beings, strange as it may be in his eyes, is it a matter of no importance. To each of these discarded servants, the difference between comfortable subsistence, and death, or scanty subsistence from the parish funds, is, in reality, of much greater importance than is to the capitalist the difference between the old established rule of profit to which he has been accustomed, and the new rule of profit to which he aspires. The law relative to the subject being uniformly the expression of the will, either of himself or of one belonging to a class still more insensible than he is to the miseries of men less fortunate than themselves, the act by which he deprives them of the whole of their subsistence, is never treated on the footing of a crime, or even of an offence. On the other hand, any act whereby the men, who by him have been deprived of the whole of their subsistence, shall endeavour to retaliate, by depriving him of ever so small a part of his vast opulence, is treated on the footing of a crime, and deep is the turpitude imputed to those who have defiled themselves with it.

As to the depravity, whatsoever may be the amount of it, one thing is undeniable, namely, that he in whose loss it is manifested under the circumstance of neglect in question, is the author of it, and has himself to thank for it.

In his own eyes, as also in those of his superiors, on whom the state of the laws depends, the heart of the man of opulence is no less full of virtue than his purse of money. To himself the difference in respect of profit is no object; but the public, the sole object of his regard,—the public is enriched by it. The discarded labourers, a mean and grovelling race, who care nothing about the public, experience nothing but what they deserve.

In the instance here in question, happily the evil here in question, if so it be that it requires any cure for the existence of it, requires no such cure as in the cases just mentioned. Supposing the securities in question granted, the copies the production of which will be completed, will furnish of themselves a fresh demand, for which no adequate means of supply can at the time, when the demand commences, be in existence.

But, whatsoever be the improved mode of multiplication employed, lithographic press or ordinary press, care should be taken that the employment given to it should not be such as to throw out of employment any of the existing scribes, except in so far as other employment, not less advantageous, is found for them. —Measures should at the same time be taken to prevent the influx of fresh hands into their business. If certificate of the stoppage of the demand for this art be not sufficient, even prohibition might be employed: prohibition absolute, or unless by license.

Next to the operation of multiplying the copies of these literary instruments of national security against misrule, comes the method of their distribution. Distribution is either gratuitous, or for a price,—for example, in the way of public sale.

Of copies to a limited amount, the distribution, it is true, might be gratuitous. But in such a case the demand might be indefinite; for to no man, able or not to read the characters on it, could a quantity of paper be without its uses. Exposure to sale, therefore, presents itself as an indispensable mode. But the price demanded should not at any rate be to any the least amount greater than what will suffice to cover the expense. If it were insufficient, it might be so much the better. On the side of convenience, all that is essential, is that it be not so small as that for purposes other than that of reading, it should be worth a man's while to purchase it.

Obvious and unanswerable is the reason why, so it does but prevent undue application to purposes other than those designed, the price cannot be too small. The usefulness and the efficiency—the usefulness of these securities will be as the number of the minds by which cognizance of them is taken. On this ultimate security depends the efficiency of whatsoever else can be designated by that name. For the benefit of this security, no expense that can be incurred by a number of copies, equal to those of the individuals able to read them, can be too great.

Section IV.

Application of Public Recitation to Ordinances.

As far as it goes, this operation, compared with swift exposure to sale, presents several advantages.

Digitized by Google

1. By this means, a conception of the master document in question may be conveyed to minds in vast multitudes, to which, by any other means, it would not be possible to convey it.

2. It is not necessarily attended with any expense.

3. It is susceptible of any additaments applied to it in the view of rendering it the more impressive: of these presently.

On the other hand, the signs by means of which the conception is conveyed, or endeavoured to be conveyed, to the minds in question, being of the supremely fugitive and transient kind, their existence ceasing as soon as it has commenced, deplorably inadequate will this mode of communication uniformly be, in comparison with that which operates by signs, susceptible of indefinite permanency. Nor even for the single instant in which the communication takes place, can the conception derived be generally expected to equal that which has place in the other case, in any of the qualities requisite; namely, in clearness, correctness, or comprehensiveness: much less at any instant separated from that first instant by any considerable interval of time.

Now as to impressiveness. This quality is capable of being raised above the ordinary standard by any one of the following circumstances:

1. The rank of the person by whom the recitation is performed.

2. An extraordinary degree of aptitude on his part, in respect of the properties desirable on the part of a public reader or speaker: for example, clearness of pronunciation, strength and agreeableness of voice, propriety of intonation with reference to the occasion.

3. The place at which the recitation is made.

4. Any circumstance of ceremony with which it may be thought advisable to accompany the operation.

The discourse in question being drawn up and agreed on, the sovereign, for example, in the principal mosque, stationed in an elevated station, in which he may be seen by the whole assembly, takes the paper in hand, and reads it in a voice suited to his convenience. When read, he touches it with his seal—with the seal by which his acts as sovereign are in use to be authenticated; he touches it with his seal, and that instant a signal being given, notification is conveyed to the greatest distance by the firing of artillery, and musketry, and the sounding of drums and trumpets, or whatever wind instruments of music are in use.

After this, for the more effectual information of the surrounding audience, the best reader in all points taken together as above, that can be found, reads the paper over again, and the notifying sounds, as above, are repeated. The ceremony might be preceded and followed by a procession from the palace of the sovereign to the mosque, and back again.

After the reading has been performed, any such declarations of censure on all infractors may be added as the forms of the religion and the usages of the country will admit of.*

In those Monarchies of Europe which are called Constitutional, in them, and in those which have elsewhere sprung from them, it has been customary for the Monarch to open and close the legislative assemblies by a speech from the throne—a speech of which, though not so much as supposed to have been the framer, he is himself the recitator. But of all these general speeches one general character may be given. For the most part they contain nothing but vague generalities. They contain no enactments. They are not intended to give expression to any specific engagements. Indeed the manifest and scarcely dissembled object is to avoid binding the Royal speaker to anything—to keep his hands as free as possible. If on any occasion they amount to anything, it is when the object of them is to notify, though in the most general terms, the assent of the Monarch to a new Constitutional Code, or to any particular law to which a preeminent degree of importance is attached; or to propose, in the most general terms possible, a subject for deliberation and eventual enactment.

In the case of Tripoli, should the consent of the Sovereign to the proposed system of securities be obtained, the design, if I understand aright, is to endeavour to prevail upon him to re-echo from his own lips, not merely a form of words expressive of his assent, but the whole contents of the discourse, unless the length of it should be such as to present an insurmountable obstacle to the physical exertion necessary.

For this purpose, the example, as above, of the Sovereigns of Europe might perhaps contribute more or less to the surmounting of any reluctance of which the novelty of the proposal may have been productive in his mind.

Section V.

Notification and Publicity as to Transgressions.

By transgression, understand, as above, instances in which the tutelary ordinances, having

* In England, when concession was made by King John, and afterwards by his son Henry the Third, copies were ordered to be deposited in certain monasteries: also public maledictions to be pronounced at certain times against all infractors. These means of publicity and impressiveness proved lamentably insufficient, as the numerous recorded infractions and renewals of these *charters* (such was the name given to the written instruments) abundantly demonstrate. But the means of publicity and permanence which then had place in England, were as nothing compared with those which at present have place at Tripoli: not to speak of the ulterior ones which it might be made to have. Besides that there was no printing press, the arts of reading and writing were not to the amount of a tenth or twentieth part, or more, so extensively in use.

Digitized by Google

been established, as above, acts of oppression, as above characterized, happen, notwithstanding, to have place.

Unfortunately in this second instance, the placing the matter in question in broad daylight, is not altogether so safe, nor yet so easy, as in the former instance.

To an operation of this description, the nature of the case will be seen opposing these obvious opponents; namely, fear, indolence, and poverty. It remains for inquiry what can be done towards the surmounting of these several obstacles.

1st. Obstacle—*fear*. To observe where the fear attaches, we have but to observe the parties whose conjunct labours are necessary to the production of this result.

These are, 1st. The person or persons from whom in each instance the information should come; 2d. The person or persons by whom it should be received. Furnisher of the information any person may be: a receiver of it is as such a sort of public functionary; at any rate, if so it be that he does what is required to the giving publicity to it, as he must do sooner or later, or he might as well not receive it.

In comparison with that which is offered by fear, the force of all other obstacles put together is inconsiderable.

Fear is the expectation of eventual evil, evil at the hand of all those to whom publicity, in relation to the event in question, may come to be disagreeable. Against all such fear, the most effectual of all securities is *concealment:* concealment of every person by whom anything has been contributed to the publicity of the obnoxious state of things.

Known it is necessary they should be—known to the functionary by whom the information is received or extracted, were it only for the sake of eventual responsibility, in case of disturbance given to the peace of the community and of individuals, by false accounts. To one functionary, or perhaps one set of functionaries, it is necessary that for this purpose every person contributing to the furnishing of the information, should be adequately known: known to the purpose of being eventually forthcoming to the purpose of being subjected to punishment, in case of mendacity or injurious temerity. But to no other person is it necessary that he should be known.

Next come the several persons by whom any part is borne towards the giving permanent and appropriate publicity to the information when received. At one stage or other, some one person at least there must be—naturally persons more than one—whose agency in the business cannot be kept concealed: concealed, that is to say from those from whose power vengeance will naturally be to be apprehended. But when any one person is known, as having borne a part in it, the greater the number of the persons thus known to have done so the better: the greater the number, the higher their situation (meaning their official situation) and the more dispersed their several situations—meaning their topographical situations. For the higher their official situation and the greater the number of the persons occupying these several situations, the more dangerous will it be for the oppressor to endeavour to extend to them his oppressing hand: the higher and more numerous the more dangerous, and the more dispersed the more difficult.

Suppose, for example, by one such functionary, or set of functionaries, information of an act of oppression received and committed to writing. If their situation is that of a set of functionaries constituting a Judicatory of the higher order, then suppose a copy sent to every Judicatory in the Dominion, and by the joint authority of them all made public at one and the same time: made public by whatsoever means of publicity happen to be at their command. Here the security against vengeance from the oppressor is at its *maximum:* unless it should be deemed advisable, that from this branch of the authority of the State, communication be also made to the Military.

2d. A Case may be supposed in which whether fear have place or no, indolence may oppose a bar, more or less powerful, to communication. Suppose the oppressed party alive and in condition to act, indolence is not in his instance very likely to take place. For affording the requisite excitement, the desire of compensation and vengeance will, generally speaking, be sufficient. But to him, even though living, it may happen that the injury is not for some time known; and the case in which the oppression—the injury—is at its maximum, is that in which adequate excitement is most apt to be wanting. This is the case in which, by the oppressive act, the life of the victim has been made a sacrifice. In this case, whether any connexion of his disposed to come forward and seek redress, be in existence, will be matter of accident. In one case, and that not a very uncommon one, the non-existence of any such person will be an occurrence altogether natural. A dead body, say at the dawn of day,—the dead body of a man is found lying on a high road or some such public place, and for some time nobody knowing whose it is, by no connexion of his is the catastrophe known or suspected.

In a case of this sort, the object is to obtain information from the first person to whose senses the spectacle has happened to present itself in the first instance. Here, for surmounting the resisting force of indolence, three active forces present themselves: appeal to the social affections by a standing authoritative and appropriate discourse, punishment in the case of non-performance, and reward in the case of performance, of this public service. Of these instruments, whether one or more, or all, may with most propriety be applied, will depend upon circumstances; circumstances too particular to lay claim to a place here.

3d. Obstacle—poverty. Understand rela-

Digitized by Google

tive poverty—inability to defray the expense, whatever it may be. Of the operations necessarily preparatory to the ultimate publication above brought to view, an indefinite number may, any or all of them, be unavoidably attended with an indefinite amount of expense. 1. Collecting from places in indefinite number, each of them indefinitely distant, persons capable of serving in the character of reporting, or say, deposing witnesses. 2. Committing to writing the result of their respective depositions. 3. Transmitting from Judicatory to Judicatory, from office to office, copies of the written instrument to which the statement of the case was first consigned.

Though provision might, in some way or other, be made for them, the case required that these several sources of expense should be brought to view. In what particular way any such provision may most conveniently be made will depend upon local circumstances, such as are not within the cognizance of him by whom these particulars are offered to view.

Note here, that as well upon those who are likely to be most willing, as upon those who are likely to be most unwilling, should the tone of whatever ordinances are issued for providing publication be as forcibly imperative as possible. The more irrisistible in appearance the coercive process, the greater will be the security given to him in whose breast any desire to co-operate towards the beneficial effect in question has place: against the wrath of the offended and denounced oppressor he has coercion to plead as his excuse.

Section VI.

Notification and Publicity as to Suffrages—Newspapers: Letter Post.

To the subject-matter thus denominated, the operations which apply to the purpose in hand will be seen to be the following, viz. 1. Extraction. 2. Registration. 3. Multiplication. 4. Transmission or say diffusion.

For all these several operations one and the same instrument presents itself as the efficient and the only efficient instrument. This instrument is no other than a Newspaper: multitude of instruments of this same sort employed by so many different sorts of hands, and multitude of copies of each, as great as possible.

In this instrument may be seen not only an appropriate organ of the Public-Opinion Tribunal, but the only regularly and constantly acting visible one.

In this same tribunal it is by the Newspaper Editor that in each case the motion in which the decision originates is made: and thus much of the matter is no fiction, but the exact truth. Thereupon come the suffrages;—suffrages given by those members of the community being at the same time readers of the Newspaper, or in converse with those that are,—so when it happens to take cognizance of the matter. These suffrages being, from the nature of the case, incapable of being collected, the number of them must in each case be left to inference and conjecture. Meantime thus much may be remarked, namely, that in the instance of each person it is by the real and true opinion, the real and inward affection, not the opinion and affection declared and avowed, that the salutary effect or the check applied to misrule is produced: for it is by opinion and affection really entertained, and not by the opinion and affection professed to be entertained by a man that an action in the shape in question is produced.

Newspapers, suppose, two taking different sides of the question in each case: one suppose the side of the suffering people; the other the side of the oppressing Sovereign and his misrule. Here the case is rendered more complicated; motions the tenor of them in every instance visible and permanent. Suffrages expressed or not expressed, *i. e.* with or without tenor, but in both cases, invisible and evanescent. Of these suffrages some are on the side of one of the writers, others on that of the other.

Greater is the efficiency of this one sort of written instrument than that of all other written instruments put together. On this and that question pamphlets and books, works, small and great, may be written. But by no one of them is any regular cognizance taken of the several occurrences as they take place: for by any publication, suppose any such regularity and constancy of attention kept up, it becomes the very thing here in question, *i. e.* a Newspaper.

In a Representative Government, at any rate in a Representative Democracy, with the exception of the function of the principal Minister, more important is the function of this unofficial functionary than that of any official one. More important, that is to say, in particular to the great purpose here in question—that of making application of the power of the Public-Opinion Tribunal in its highest character and by far the most beneficial one, of a check upon misrule. Of this superiority the causes are—1. In each individual instance the greater number of the suffrages on which the motions made by these Representatives of the people are taken for their ground, the motions made by these unofficial compared with those made by any official representative. By the Prime Minister impulse is given to the machinery of the political sanction: by the Editor of the prime popular Newspaper to that of the Social Sanction.—But, 2. more particularly the constancy and continuity of action which has place in this case—sources of influence in respect of which no official Representative limited as his motions and discourses are, to particular and scattered reasons and scattered points of form can hold comparison with him.

The aptitude of the Newspaper in question, with reference to the greatest happiness of the

Digitized by Google

greatest number being given, its usefulness will be as the extent to which the diffusion of it has place: in other words, as the number of the persons to whose minds it finds its way.

The circumstances on which the degree of that extent depends, in particular at the outset of the sort of institution in question are, 1st, the constancy; 2, the frequency, of its publication; 3, its mixture with matters of a nature universally interesting; 4, its cheapness—the smallness of the price; 5, the impartiality of its procedure in respect of the admission or rejection of articles; 6, the moderation of its language, *i. e.* its purity from expressions of vague and ungrounded vituperation and laudation of men and measures.

Of the several qualities the three first are at the same time the most essential, and the most easily secured to it, as being those that are the most completely independent of the mental qualities, moral and intellectual, of individuals.

1. As to constancy. This quality is of all others the easiest to secure. It is moreover a matter of prime necessity that the institution be so conducted. The interest created and kept up by it cannot but be in the closest degree dependent upon the assurance with which, on the occasion of each paper, a reader looks forward to a regular succession of the like entertainment provided by the same hands. So invariably is this property possessed by this species of discourse wherever it has place, that the absence of it not being presented by experience, is not easily presented to view by imagination.

2. Next, in the order of importance, comes the quality of frequency. The number of readers being given, the greater the frequency of its appearance, the greater the degree of diffusion. Nor, in the instance of the aliment thus administered to the mind, is the appetite slackened by the frequency of its application, as in the case of the aliment administered to the bodily frame. On the contrary, it is rather kept alive and invigorated,—the meal of each day operating as an excitement to look out for that of the next day following.

3. Variety, admixture of the political matter with matters of other sorts, in the greatest variety possible. What gives this property an essential claim to notice, is—besides the degree in which the amount of diffusion depends upon it—that it is so little dependent upon the talent employed in the conducting of it.

Suppose, for example, six sorts of matter, each of them interesting to one class of readers, no one sort interesting to classes more than one. By this means, you have six times as many readers, and regular purchasers, as if there were no more sorts of matter in it than one. Each class stands assured of having something in which he takes an interest. As it is on no other terms that he can get anything, no one of them is debarred from the purchase of his one-sixth by the consideration that without more than that sixth it is not obtainable.

When this variety of entertainment is kept up, no imaginable literary composition can, in respect of attractiveness, by possibility enter into competition with this, nor, in particular, with reference to the uses here in question. From the physical association—the contiguity of the natural and visible signs—an association is instantly formed between the ideas of which they are respectively the representatives. Taking up the newspaper, each one is upon the look-out for the matter of that sort in which he takes a more particular interest; but while he is upon the look-out for that, matter of all other sorts is continually offering itself to his eyes. Little by little the dryness and repulsiveness of each wear away; each, in some degree or other, becomes more and more familiar to him. And even supposing that matters in which he takes no interest at all, are regularly passed over without a glance, still of those in which he takes some interest, the interest is, little by little, increased.

In what abundance, by the mere circumstance of the being among the contents of his newspaper, a man is led to the reading of articles for which he would not ever have looked in any publication exclusively appropriated to the reception of them, is a circumstance which can scarcely have escaped any person's experience.

5. Impartiality,—its uses. Wheresoever there are newspapers, there will be, or rather are already, parties; and wherever there are parties, all minor divisions naturally fall under one all-comprehensive division,—the assailants and the supporters of the party which has the power of the country in its hands. If there be any tolerable degree of freedom, a newspaper can hardly have place for any length of time, but rival newspapers, one or more, will start up likewise. Be the number of newspapers ever so great or ever so small, great would be the advantage, in respect of extent of currency, if the editor could prevail upon himself to keep up an impartial course between the two parties,—to give equal admission to attacks and to defences. Obvious altogether is the advantage which the course thus prescribed by justice would secure to him. Readers of all parties would be invited. No readers of any party would be repelled. Number of readers of each party suppose equal; on this impartial plan, the number would be the double of that which it is on the ordinary partial plan.

But, for securing to the instrument of instruction this at once most respectable and most difficult endowment—and this without prejudice to the diffusion of it—what would be the most eligible course? not to make controversial matter on either side, but to admit it on both sides. By the sacrifice of this stimulating matter, the publication would be rendered, by the double and reciprocal insertion, doubly excitative and attractive.

Digitized by Google

On the part of a newspaper editor, nothing is more easy than to profess impartiality; few things more difficult than to maintain it. But if, in the highest degree, utility depends upon impartiality—upon actual impartiality—in a not much inferior degree does it depend upon the reputation of impartiality,—upon the proportion between those of his readers, in whose eyes he is impartial, and the number of those in whose eyes he fails in respect of a quality so highly desirable: and unhappily he may be in ever so high a degree actually impartial, and yet, and even from that very cause, be partial in the eyes of both.

For keeping up impartiality without diminution of frequency, the most effectual course, supposing extent of sale to permit, would be for the proprietor of the newspaper to employ two editors, one whose assertions were on the one side, the other whose assertions were on the opposite side: the number of days in the year allotted to each being the same. Why not? The answer is, lest in that case there should be a correspondent alteration and division among the customers: one set buying the paper on the government day and not on the opposition day: the other on the opposition day and not on the government day. Not that the greater part of the readers would thus content themselves with no more than half the aggregate stock of facts. But still some there would be, and antecedently to experience it would not be possible to say how many. As to any endeavour to conceal this part of the arrangement it would neither be practicable nor desirable. To exclude fraud and injustice, and to secure harmony, some arrangements of detail would be necessary; nor does the securing such as would be adequate present to view a task of any considerable difficulty.

6. Moderation, or say good temper. Unhappily for securing this quality, important as it is, there is no such simple and effectual recipe as hath been shown to have place in the case of impartiality.

Of moderation, the simplest and clearest description, as far as it goes, that can be given is—the avoiding to employ for the giving expression of disapprobation, whether of men, or measures, or modes of action, any words or phrases of vague and violent vituperation, that express aversion or displeasure, without any precise designation of the cause of it.

Of every violation of the laws of moderation, various and serious are apt to be the evil consequences.

1. By the disgust which it cannot but produce it tends to exclude readers to a number altogether unascertainable and unlimited: and among them not only those who are decidedly attached to the party whose sensibility is thus wounded, but others who are neutral, indifferent, or undecided.

2. By the hostility thus manifested correspondent hostility on the opposite side cannot but be provoked.

3. Among the consequences of such hostility prosecutions—attacks in the field of Judicature will, with more or less frequency, have place.

Hints respecting the best plan for the conducting of a Newspaper.

1. One sort of article by which an interest, more or less exclusive, cannot fail to be excited, is—an indication of sights to be seen: things offered for purchase or hire: prices of goods of various sorts at various places: probabilities in respect of future increase and diminution of price.

2. *Accidents.* At all times, by occurrences of this sort, more or less of interest can scarcely fail to be excited in most breasts. The greater the interest taken, the greater the assistance and encouragement afforded to the sympathetic affection: that affection, upon the strength of which morality and felicity so essentially depend.

3. *Offences.* Of matter under this head, the usefulness is of prime importance with reference to the particular design here in question. Of the misdeeds of various sorts from time to time committed, few in comparison, at the utmost will be those committed by the order of the sovereign, or which it is matter of pleasure or advantage to him to see committed. For the greater part they will be of that class by which, while no profit in any shape is produced to men in power, as such, suffering is produced to individuals, and through individuals, danger and alarm to the community at large, and thereby to the Members of Government in the quality of members of the community at large. This being the case, to the publication of misdeeds in general no aversion will be excited in their minds, no objection will have place in their eyes. But the habit of writing and reading accounts of misdeeds of all sorts being once established, mention of the misdeeds committed by or agreeable to men in power, will find their way in along with the rest—will slide in unobserved by the editor, or at least, as if unobserved. And thus the way will be paved for the general admission of misdeeds, in the commission of which the man in power has an interest, or imagines he has an interest.

4. *Proceedings of Courts of Justice:* especially that of the Cadi in the metropolis: being that by the proceedings of which the greatest interest will naturally be excited.

5. *Deaths.* Number of in the metropolis, and other principal towns: according to a periodical enumeration, if obtainable. In the case of those of remarkable persons, their names given with any particulars that can be collected of their characters.

6. *Births.* Those of persons of the male sex may be ascertained by the acts of circumcision: of which a register, if not actually kept, might,

Digitized by Google

it is supposed, without much difficulty, be caused to be kept, by the Imans and Notaries of the several mosques.

7. The like occurrences in the domains of the neighbouring states.

8. Parallels between the particulars indicative of the state of society and manners, as between the state in question and other Mahometan States on the one part, and Christian States in general, or in particular, on the other.

1. Points on which the advantage appears to be on the side of the Mahometan States.

2. Points on which the advantage appears to be on the side of the Christian States.

In all these cases, constant standard of reference the greatest happiness of the greatest number.

9. Indications of physical inconveniency; with or without hints respecting the most eligible means of remedy.

To each class of articles, as above, there might be a use in prefixing the denomination of it on a separate line and larger type; as thus :—ACCIDENTS; OFFENCES; DEATHS. By this means, 1. Readers would be directed instantaneously to the class, whatever it were, in which he happened to have an interest. 2. The attention would, by this perpetually recurring excitement, be kept awake. 3. By these exemplifications the minds of the readers would be familiarised with the practice and general conception of commanding arrangements.

A degree of diffusion sufficient for continuance being supposed to be already established, now then comes the question,—concerning the general usefulness of it, by what means it may be raised to the highest pitch.

In the first place, as to the only right and proper end of sound action, the greatest happiness of the greatest number. This all-ruling, all-comprehensive, and all-important principle, though not on every occasion brought forward and held up to view in its own name, should, on every occasion, be inwardly kept in view: and even by name, the greater the number of the occasions on which, without exciting abuse and disgust, it can be brought to view the better. For by it a standard is held up, the only legitimate standard by which the mischievousness of misdeeds can be proved, and the degree of it measured and indicated.

Every occasion should be embraced of making application of the greatest happiness principle to the individual occurrences of the day, showing, 1. How morality and happiness depend upon the notoriety of the rule of action referred to by the Judicatories. 2. The advantage of the greatest degree of equality consistent with security in the distribution of the external instruments of felicity in all their shapes: in particular, power and the matter of wealth in all its shapes. 3. Showing how compensation to all sufferers by a misdeed in any shape ought to take place of punishment, because the burden of affording compensation operates as punishment so far as it goes; how punishment should be adapted to misdoing, that by allotting to the more mischievous misdeeds, the more severe punishment, those who cannot reform from misdoing altogether, may be induced to commit the less mischievous in preference to the more mischievous, &c. &c.

Particulars of the mass of literary capital to be provided antecedently to the commencement of the publication of a work of this sort.

Antecedently to the setting up any such newspaper, it would be highly advisable to have a stock more or less extensive of foreign newspapers, to serve as sources out of which heads of information would be brought to view, and might be selected. Of all newspapers the English are by far the most instructive. Next to them, those of the Anglo-American United States. In comparison with these the French are worth but little; the newspapers of all other nations put together nothing at all. The public demand which it is hoped will accompany the paper, will serve to show the prodigious number of articles of this sort that are every year published in England;—also the enormous revenue derived from them: always remembered, that this is among the worst of all sources of revenue, and more especially so would it be in any country in which newspapers are set up for the first time. The reason is, that to an extent more or less considerable, every tax operates as a prohibition, a prohibition applied to the sort of articles taxed: as in the instance in question, though a bounty would not be necessary, a bounty would be less monstrous than a prohibition.*

Suppose a dozen boys receiving at the school in question† their education, the most useful and thence the highest occupation which the best head among them could be put to, would be that of editing a newspaper on his return to his own country. The master might choose for this purpose the most promising, and he might be trained to it even at the school itself before his return.

Antecedently to the setting up as above, a stock of matter should be prepared and kept in readiness: various kinds of matter being tried for the purpose of observing and knowing which of them excited the most interest. As the publication went on, various articles of every sort, advertisements in particular, would of course be sent in by those whose taste were pleased, or their interest, as it seemed to them served. As thus miscellaneous and ever highly interesting matter by degrees came in, the less interesting matter belonging to the

* See farther on this subject p. 571, supra.

† From the memoranda and correspondence of the author in connexion with this subject, it would appear that part of his project was the education of young natives of Tripoli, in Britain; but he does not appear to have put this part of his recommendation definitively into form.—*Ed.*

Digitized by Google

original stock would give way to it. It is of the utmost consequence that on no appointed day whatsoever any failure of the appearance of the paper should take place: and by the preparatory stock in question, all such failure might effectually be prevented.

Production and multiplication are effected by newspapers: conveyance by the letter post.* These and whatever other documents require, for the production of their intended effect, to be sent to a distance, are of no use, but in proportion as they are conveyed to their respective destinations. Between any two places in the dominion in question, is there any such establishment as a post for letters? A messenger or chain of messengers travelling at stated intervals between the one and the other? Between the capital, for instance, and the two Universities, or one and which of them? The first thing to be done in this way would be to establish a system of communication of this kind between the office of the Cadi at the capital, and the several judicatories. Next to that would be the establishing the like between each judicatory and the several mosques within its territorial field of jurisdiction, messengers one or more going the circuit among the mosques.

In time, pay received for letters sent from individuals to individuals, might lessen the expense to government. As the number of persons who read and write receives increase, so will the receipts of every such establishment. But at no time should any of these receipts be made a source of revenue. A tax on the intercourse between man and man being a prohibition on all who cannot afford to pay the tax, cripples social intercourse: cripples it for all sorts of purposes, and nips all improvement in the bud.

Of the proposed system of communication, the direct as being the most important object is—personal security; and in particular security against oppression by the hands of rulers. But a system of communication, if once established for the major purpose, will apply itself of itself to all minor purposes. It will contribute to the efficiency of the judicial power as applied to its more obvious and more ordinary purposes. It will contribute to the security of individuals as against injury by individuals.

It will contribute to the increase of commerce: in regard to each article, making known to each possessor of a surplus beyond his occasion, where those individuals are to be found, who, to the desire of possessing the article, add the means of paying for it. Whether for the mere chance of finding individuals in sufficient number able and willing to make use of it for merely commercial purposes, it would be worth while to establish a system of communication in the first instance, would be matter of uncertainty calling for calculation; but, on the supposition that it would be worth while to establish it for the sake of security alone, any the least chance of its being contributory to the increase of commerce, that is to say to the increase of opulence, cannot but operate as an additional probable benefit, and as an additional inducement.

Meantime, in the early state of the establishment, by whom shall the expense, whatever may be the amount of it, be defrayed? A question this which, where any advance is proposed to be made in the track of civilisation, is unhappily obtruding itself at every step. As to the sovereign, the funds of the state, which are all of them his funds, are never sufficient for so much as his own personal expenses; never sufficient, as yet, nor in the nature of the case, under such a form of government, ever likely to be so.

Soldiers in a certain number—say 8000, are at present kept up. If of these a certain number were regularly employed as letter-carriers, they would not be the less fit for service in the character of soldiers: they would be the more fit. By thus changing their situation, these messengers would thus become every day better and better acquainted with the country; and in that way as well as others, be by so much the fitter for service in their character of soldiers.

A slow conveyance, so it were but regular and constant; a slow conveyance extending over a large portion of the territory, might be preferable to a more expeditious one extending over a less portion of territory. For quick conveyance, horses, mules, or dromedaries, would be necessary; but by this means the expense would perhaps be doubled. In certain districts, camels would be necessary for the carriage of the water necessary for subsistence; but this would be only in certain districts.

CHAP. IV.

THE SECURITIES IN DETAIL.

PART I.

SECURITIES IN FAVOUR OF THE NATION CONSIDERED IN THE AGGREGATE.

SECTION I.

Securities against Vexation on Account of Religion.

ART. 1. Provided that it be in a chamber enclosed and covered, and that the eyes of the true believer be not annoyed by public ceremonies

* What follows was written, as appears from the dates on the MSS., some months previously to the above considerations as to newspapers: and the circumstance that the subjects though intimately connected with each other were separately treated at different periods, will account for any want of connexion that may appear in the arrangement. —*Ed.*

Digitized by Google

or processions, with religion for their cause or pretext, or his ears by the sound of bells or other noises: provided also, that by no religion shall any justifying cause be made for causing suffering in any shape to any individual in respect of person, property, reputation, or condition in life:—Every person is at liberty to perform divine service after his own manner. For this purpose any persons without exception may assemble together in private or in public.

Art. 2. Every person is at liberty to write and publish whatever he pleases on the subject of religion, even although the truth and the goodness of the only true religion be impugned thereby: by the true believer, that which is adverse to the only true religion, will either not be read at all, or read with the merited contempt.

Counter-Security. Provided that no writing or imitative figure, containing matter thus odious to the only true religion, be exposed anywhere to view in such manner as to be offensive to the eye of the true believer as he passes. For any such exposure, any person is responsible to the purposes of punishment.

Art. 3. Every person is at liberty to speak what he pleases on the subject of religion, even although the truth or the goodness of the only true religion be impugned thereby: by the true believer, that which is adverse to the only true religion will either not be heard at all, or heard with the merited contempt.

Counter-Security. Provided that no discourse whereby either the truth or the goodness of the only true religion is impeached, be uttered in any public place in such manner as to be offensive to the ear of the true believer as he passes: or in the presence and to the displeasure of any true believer in any private place. The utterance of any such discourse in the hearing of a true believer is an injury to him, and as such may be punished according to law.

Section II.

Securities against National Gagging: or security for Appeal to Public Opinion and the Power of the Law, on the subject of the conduct of all persons whatsoever, functionaries as well as non-functionaries.

Art. 1. Every man is at liberty to express as well by visible as by audible signs, and in any way and to any extent to make public, whatsoever in his judgment it will be contributory to the greatest happiness of the greatest number to be informed of: and this although disapprobation be thereby expressed towards persons in authority, or any of them, whether on account of the general tenor of their conduct, or on account of their conduct on this or that occasion in particular.

Counter-Security. Provided always, that for any injury thereby done to the reputation of any individual by false imputations, every person concerned in the doing of such injury is responsible to the purpose of reparation and punishment at the suit and for the benefit of any individual or individuals injured: and that, for anything which being so expressed, has for its object the exciting men to the commission of this or that particular offence, any man shall be responsible as above, according to the nature of such offence.

Art. 2. If, on account of any indication given of supposed delinquency in any shape on the part of any person, non-functionary or functionary, a party be proceeded against at law as for injury to reputation, proof of the delinquency so indicated shall be received as a cause of justification; and for the making of such proof, the testimony of that same individual on whom the delinquency is charged, may be extracted in the same manner as that of any other person.

Art. 3. All persons are at liberty at all times and in any number, to hold converse with one another on all subjects in general, and on the subject of the conduct of persons in authority in particular: and on the means of rectifying whatever may be amiss either in the conduct of rulers or in the form of the government, to hold converse, namely, as well in the way of correspondence at a distance, as in presence: and if at a distance, and thence through the intervention of others, as well by written as by oral discourse.

Counter-Security. Provided always, that if for the prevention of evil to person or property, it shall at any time be thought good by the proper authority, for limited time, to prevent or inhibit persons at large from coming together in numbers greater than are capable of hearing from beginning to end, the discourse of the same speaker at the same time,—especially in the night-time, and with arms about their persons: in any such case, that which shall be so done to this purpose, shall not be considered as done in breach of this article.

Art. 4. Every act having for its object the production of the effect thus denounced, under the term National Gagging, is placed as above in the list of injurious acts. Every person who has knowingly any part in the production of it is accordingly punishable by the obligation of making reparation, with or without punishment in another shape, according to the shape in which the injurious act has shown itself.

The *right* of which the offence thus denominated is the infringement, is the right of exercising influence in the choice of the whole number of those members of the community by whom a public function in any shape is exercised, and of declaring an opinion on their conduct, as well as that of every other individual in whose good conduct all members without exception have an interest; the right of censorship, including the right of receiving and writing communication relating to the information which, to be just, the exercise of this function requires a man to be possessed

Digitized by Google

of: in short, the possessing on each occasion in a manner sufficiently correct and extensive, the proper grounds of censorship.

Right Recognised. Giving expression and publicity to all facts and observations which, in the judgment of the individual in question, promises to be contributory to the greatest happiness of the greatest number: whether the tendency of the correspondent information be to raise or depress this or that person in the scale of public estimation.

Correspondent acts of power prohibited, as being violations of these rights, and thereby put upon the footing of punishable offences—punishable in the same manner as they would be if exercised by persons not invested with any such power.

1. Punishing, or endeavouring to contribute to the punishing of, any person for having given utterance to any discourse to the effect in question, expressed by audible signs.

2. Punishing any person for giving expression to such discourse by visible signs: that is to say, in characters written or printed.

3. Punishing any person for transferring to another for a time, or in perpetuity, either gratis or for a price, any paper in which such signs stand visible.

4. Seizing, detaining, destroying, or damaging any paper or other substance, on which signs expressive of the sort of discourse in question are marked. Issuing or contributing to the issuing of any order for such seizure, detention, destruction, or deterioration—giving or contributing to give execution to such order.

5. Obstructing by force, intimidation, or deceit, the meeting of persons in any number, in any place in which they have individually any right to station themselves,—obstructing them while in the act of making communication of such their observations, and the opinions and wishes suggested by them. In a case where physical force is thus employed, the act of applying it is a corporal injury: where the same effect is attempted to be produced by deceit, it is a fraud.

6. Seizing the body of any person so occupied, thereby infringing his liberty of locomotion. Corresponding offence—injurious confinement.

7. Seizing any paper, writing, printed book, or other visible instrument of discourse, having for its object the making two or more persons assemble for any such purpose as above. Corresponding offence—violation of private writings—of visible instruments of communication between man and man.

8. Consequences in respect of eventual acts of corporal injuriation, (homicide included,) in prosecution of the above forbidden designs:—

Art. 5. In case of any bodily contest between persons occupied in the exercise of any of the above rights, and other persons, functionaries or non-functionaries, occupied in the endeavour to give disturbance to such exercise, any wound or other suffering unavoidably produced by the exercisers or any supporters of theirs in the way of self-defence, is lawful and unpunishable: but if produced by the disturbers on the persons of the exercisers, unlawful and punishable: punishable in the same manner and degree as if no such pretence had been set up.

Art. 6. On the occasion of any such contest, all persons are warranted in giving assistance to the exercisers: no person is warranted in giving assistance to the obstructors.

Art. 7. So in regard to damage done to property in any such bodily contest: damage unavoidably done by the exercisers or their assistants to property of the obstructors is lawful and unpunishable: damage done by the obstructors or their assistants is unlawful and punishable.

Section III.

Securities against National Disarmament and Debilitation.

Art. 1. All persons are at liberty to keep arms of all sorts, to wit, either in their own habitations or elsewhere, at their choice: also to exercise themselves, and cause themselves to be trained, in the use of arms, whether it be separately or in any numbers.

Art. 2. Also, singly or in companies of any number, to carry arms about them for their own defence.

Counter Security. Provided always that if for guarding against temporary oppression of the greater number by sudden insurrection of the smaller number under favour of surprise, it shall at any time be thought good for the proper authority to inhibit such assemblies from having place otherwise than after due notice, neither shall any such inhibition, nor any necessary measures taken for giving effect to it, be considered as amounting to a breach of this article.

So if to prevent slaughter, spoliation, or oppression of individuals by individuals, it shall seem good to the proper authority to prohibit the carrying of offensive arms in this or that particular place, or by this or that particular person or set of persons, or on this or that particular occasion, or during this or that particular time; or to prohibit all persons from carrying any offensive arms in a concealed manner at any time.

Otherwise than as above, every act having for its object the production of the effect of national disarmament and debilitation, is placed in the catalogue of injurious acts.

The rights of which, the offence thus denominated is a violation, are:—

1. The right of putting and keeping one's self in a state of aptitude, in the character of a member of the armed force of the community.

2. The right of exercising one's self, and being exercised in the use of arms.

Correspondent acts of power prohibited, rendered unlawful, and as such punishable as

Digitized by Google

being acts of violation with reference to the above rights: punishable as if exercised by persons not invested with power.

1. Punishing any person for having been occupied in training himself, or being so trained, or in training any other person.

2. Punishing any person for repairing, for the purpose of being trained, to any place in which for any other purpose he had a right to station himself.

3. Punishing any person for giving invitation to others in any shape, either oral or graphical, to engage in any such exercise, or to meet others for the purpose of such exercise.

4. Obstructing, or endeavouring to obstruct, by force, intimidation, or deceit, the meeting of persons in any number for this purpose.

5. Obstructing them as above in the commencement, or continuance, of the set of operations here in question.

PART II.

SECURITIES IN FAVOUR OF INDIVIDUALS.

SECTION I.

General Declaratory View.

ART. 1. No person shall, against his will, or against the will of those under whose guardianship he is placed, as the case may be, be arrested, imprisoned, or otherwise confined, except for the purposes, and on the occasions, and in the manner, determined and declared by law.

ART. 2. No person shall, against his will, or against the will of those under whose guardianship he is placed, as the case may be, be sent or kept out of the dominion of the State, or any part thereof, except for the purposes, and on the occasions, &c. (as above.)

ART. 3. No person shall be put to death, but for the purposes and on the occasions, &c. (as above.)

ART. 4. No person shall be mutilated, disabled, bruised, wounded, or otherwise made to suffer in any part of his body, except for the purposes, and on the occasions, &c. (as above.)

ART. 5. Of no man shall any personal service in any shape be exacted, except for the purposes, and on the occasions, &c. (as above.)

ART. 6. On the security of no man's property shall any infringement be made, except for the purposes and on the occasions, &c. (as above.)

ART. 7. On the security of no man's private writings shall any infringement be made, except for the purposes and on the occasions, &c. (as above.)

Of the security of a man's private writings it may be an infringement, if, against his will declared or justly presumable, they be placed or kept out of his custody, within or without the dominions of the State, or destroyed, or inspected, or seized, for whichsoever of these or any other purposes it be.

ART. 8. When, for giving execution and effect to the law, it becomes necessary, in virtue of the exceptions mentioned in the above articles, to make infringement on the security of body or goods, no such infringement shall be made beyond what the necessity of the case requires. For any farther injury to body or goods, all persons therein concerned, functionaries or non-functionaries, shall be deemed trespassers, and as such responsible in respect of burthen of compensation and punishment, in the same manner as wrong-doers at large.

SECTION II.

Securities against secret confinement: for protection of the persons of individuals against oppression by persons in authority, without, or even with the knowledge of the sovereign.

ART. 1. Wherever, on the alleged ground of its being in furtherance of the purposes of justice, the person of any man is put under confinement, information thereof shall be given in the most public manner, to the end that all persons taking an interest in his welfare, may have it in their power to take lawful measures for securing him against injustice.

ART. 2. To this end the name and situation of every habitation, designed by authority to be used as a place of confinement, whether on the score of delinquency or of insanity, shall be entered in an appropriate register, an exemplar of which shall be kept in the metropolis in the office of the chief Judicatory: and of this exemplar a copy shall be kept in the office of every other Judicatory.

ART. 3. On the commitment of an individual to any such place of confinement, entry of such commitment shall be made in a register to be therein kept for that purpose, mentioning the name by which, on his own declaration or memoir, such individual is distinguished: the person or persons by whose hand he has been brought to prison: the person or persons by whose authority he has been brought to prison: the cause for which he is so committed: the time for which he is so committed: and the evidence on which such commitment has been grounded, —a sufficient description by name and memoir of every person on whose testimony the commitment has had place being added, as also the cause for which the individual has been committed.

ART. 4. Within [ ] hours after the commitment of the prisoner, a copy of such entry shall be pasted up over the door of the Judicatory, in such characters and situation that it shall be legible to all passengers.

ART. 5. If at any time, by any special necessity, the commitment of the prisoner to the appropriate prison be rendered impracticable or improper, any other building, public or private, may, for the time, be employed for the purpose, care being taken that the vexation thereby occasioned, as well to the occupant of such building, as to the prisoner, be as little as possible; and that at the expense of

Digitized by Google

the prisoner, if found guilty, or otherwise at the public expense, (if there be funds sufficient,) compensation be made to the occupant for the vexation: for which reason also, that building which for this purpose may be employed with least vexation—compensated or uncompensated, to the occupant, must be in each case preferred.

Art. 6. Cases for which, instead of the ordinary appropriate prison, an extraordinary prison as above may be employed, are as follows:—

1. The ordinary prison being rendered incapable of holding the prisoners without danger to health or safe custody, by reason of its fulness.

2. —— —— or by want of repair.

3. —— —— or by unhealthiness,—produced, for example, by contagious disease.

4. The ordinary prison rendered by distance inaccessible without halting for repose.

5. —— —— or rendered inaccessible by hostility on the part of enemies, foreign or domestic.

6. —— —— or by danger of forcible rescue.

Art. 7. If in any such occasional prison a person be detained more than (24) hours, over the door there shall be posted up a paper, such as that described by Article 4 in the case of an ordinary prison, and for the framing or attestation thereof, the assistance of some Iman be invited: that of the Iman of the nearest mosque in preference.

Art. 8. On the commitment of a person to any such extraordinary prison, the bringer shall give the earliest possible notice to the keeper of the ordinary prison, and to the President of the Judicatory in whose district the extraordinary prison is,—of the fact of the detention, together with the cause by which it was rendered necessary, and whether such notice as should have been fixed up, as above, is or is not fixed up, and if not, why not.

Art. 9. The bringer shall make known to such keeper of the ordinary prison, and such judge, the fact of such detention at the extraordinary prison, together with the causes and circumstances of it: if he omit so to do, the detention shall, during the omission, be deemed unlawful.

Art. 10. Every person who knowingly and wilfully has been contributory to the injurious imprisonment of any person, shall himself suffer imprisonment for a length of time equal to that during which the party so injured was imprisoned; and shall, moreover, to the extent of his means, be compelled to furnish compensation, in a pecuniary shape, for the injury.

Art. 11. Any person by whom it shall be known or suspected that, in a certain building, or other receptacle, a certain person is kept in confinement, may repair to the keeper, and require to be informed by him whether such person is actually under his custody. If, being so interrogated, the keeper refuse or forbear to make answer, or make a false answer, he shall suffer condign punishment, and if, at the time of the interrogation, the person in question was actually in his custody, shall be punished as having been guilty of injurious imprisonment.

Art. 12. To the interrogation, whether the person in question be at that very time in the custody of such keeper, may be added the interrogation, whether, at any, and what time, he had been in such custody: and if yes, in what manner, and by what means, he ceased to be so.

Art. 13. For prevention of vexation and impertinent inquiry, the keeper, before he makes reply to any such interrogatory, as above, may require the applicant to make himself known, to the purpose of eventual responsibility.

Art. 14. Any person to whom, by any such keeper, any such acknowledgment has been made, may repair to the judicatory of the district in which such place of confinement is situated, and there require of the judge that the person so under confinement may be produced before him, and that, at a public audience, inquiry be made into the cause of such confinement: which inquiry made, the person shall be remanded or set at liberty, or otherwise dealt with as the case may require.

Art. 15. What is here said of a prison shall be understood of any other place in which, whether according, or not according to law, the person in question is under confinement.

Art. 16. If, to avoid his being produced to the judicatory, as above, a prisoner is shifted from place to place, all persons concerned in such shifting, and conscious of its having that for its purpose, shall be responsible as for injurious imprisonment.

Section III.

Securities against injurious banishment.

Definitions. Injurious banishment is where, without, or otherwise than according to lawful sentence of a judicatory, a subject of the state is, to his vexation, by force, unlawful intimidation, or fraud, sent or kept out of the state, or any part thereof.

If out of the whole territory of the state, the banishment is external: if out of this or that particular part, internal.

The intimidation is unlawful, if the means employed be a threat of vexation by unlawful means, or even of lawful prosecution, for other cause than injury done to the individual by whom the comminatory intimation is conveyed, or to some individual on whose behalf he is entitled to prosecute.

Art. 1. Of any sentence of banishment, external or internal, pronounced by a subordinate judicatory, notice shall, by the earliest opportunity, be sent to the office of the head judge; nor shall the sentence be executed until confirmed by his signature; nor then, until thirty days after the sentence has been read in the Chamber of Audience.

Art. 2. Every person who knowingly and wilfully has been contributory to the injurious

Digitized by Google

external banishment of any person, shall suffer imprisonment for a length of time equal to that during which such banishment shall have had place; and shall, moreover, to the extent of his means, be compelled to contribute to the furnishing compensation, in a pecuniary shape, for the injury.

Observations on the subject of preventive measures against injurious and secret banishment.

For security against secret and injurious banishment, two obvious measures of the preventive class present themselves: one is, prohibiting egress, without passports; the other is prohibiting egress without entry of the fact in the Official Register Book.

It may, perhaps, be too much to say that, in no state of things, either of these means ought to be employed; but what may be said, and with truth, is, that generally speaking, the evil of the remedy will be found to preponderate over the good. The state of things will be an extraordinary one, if, for one instance in which the egress is involuntary on the part of the individual, there will not be hundreds, not to say thousands, in which it is voluntary—say, for argument's sake, one thousand. Here, then, in the hope of saving, from the greater vexation, a single person, a thousand are subjected to the lesser. But, in the case where a passport is rendered necessary, neither in its length, nor therefore in its aggregate amount, has the vexation any certain limit. Power without limit, over every one who has need of the passport, is thus given to the functionary or functionaries, whoever they be, whose signature or signatures are necessary to the giving validity to it; and thus, for the sake of saving one from injurious banishment, a thousand are exposed to arbitrary confinement—confinement not the less vexatious for not being against law. In the case where simple registration is all that is required, the power of granting or refusing the passport not being given in a direct way, the danger of abuse may seem as if materially lessened, if not removed. It is not, however, by a great deal, so effectually lessened in reality as in appearance: for still, so long as the minute in question remains unmade, the confinement is as effectual as if the case had been that of a passport that had been delayed.

The argument from the security thus afforded has hitherto been supposed entire. This, however, it cannot be in any case: and the more uncertain the effect of it is, the less the utility absolutely considered, and thence comparatively, with reference to the vexation produced by it. The efficacy will depend upon the nature of the communication with other countries, and the efficacy of the means actually employed for keeping persons and things in a state of confinement;—true it is that exportation of another person against his will is not, in general, so easy to a man as the exportation of his own person, or of an equal mass of inanimate things.

Section IV.

Securities against secret and unlawful Homicide.

Art. 1. On the death of every person, except as excepted, notice thereof shall be given to the Iman of the parish within which the death took place; if in any dwelling-house, by the occupier thereof, or some other person in whose presence the death took place: if not in any dwelling-house, or the ground belonging to a house, and occupied therewith—as, for example, on a journey, if at the time any person or persons were present, then by some one or any of the persons present—if the person be found dead, then by some person by whom the body was found.

Art. 2. In every case in which it appears that in the production of the death of any individual human agency has in any shape borne a part, every person to whose mind or senses appearances tending to give probability to such an incident have presented themselves, is expected and required to give to his conception in relation thereto whatsoever publicity it may be in his power to produce.

Art. 3. To this end, after making inspection of the dead body, if it be in his power, with his own eyes, let him repair to the nearest mosque with all possible despatch, and communicate to the Iman such observations as he has made: to the end that this servant of God may take cognizance of the facts, and in case of immoral agency on the part of any individual, do whatsoever may be in his power towards the discovering and punishing of every criminal so concerned.

Art. 4. Having received such communication, the Iman shall, with all practical diligence, repair to the spot on which the body lies, and there make examination of the state of the body, and make inquiry in relation to the matter at the hands of all persons by whom appropriate information is offered, or at whose hands it seems capable of being obtained.

Art. 5. In taking such examination, let the servant of God proceed as follows:

1. Except as excepted, let everything done by him on this occasion be done as publicly as possible.

2. If, in regard to this or that person, he sees reason to suspect that on seeing what passes he may give information thereof to some person or persons contributory to the death, for the purpose of enabling them to escape, he may keep secret from such person anything that tends to point suspicion upon the person so suspected, until means have been taken for his arrestation.

3. Let him, in the name of God and his Prophet, adjure all persons so interrogated, to declare the truth, the whole truth, and nothing but the truth, in relation to the matter in hand, and that as well spontaneously, as in answer to all such questions as he shall have to put to them.

Digitized by Google

4. In case of refusal to give information, or to make answer to this or that question, let him take note thereof; but if any allegation in justification of such refusal be made, let him make mention also of such allegation.

5. So if any means be used to evade giving such information.

6. So, if after promise to give it, such promise be not fulfilled.

7. Of the demeanour as well as discourse of every individual at whose hands testimony is required, as above, let him take account in writing, noting as correctly as possible the very words of everything that is said.

8. In the case of each individual so interrogated, let him read over to him what has been written: in every instance where it has been signified by the witness that the account so given by him was in this or that particular incorrect, and that it ought to have been so and so, let him make addition accordingly. But let him not on this account obliterate anything that has been written; for any contradiction that has place between any subsequent part of the testimony, and any antecedent part, may help to make known the truth.

9. At the end of the account thus given of each person's testimony, let him cause the witness, if able, to write his own name in confirmation thereof: if unable, let the servant of God write the name, and cause the witness, in confirmation thereof, to take the pen in hand and make a mark: and to this mark let him add in his own hand, or the hands of the respective persons, the names of the persons who saw the mark made: or of a competent number of them, choosing such whose attestive testimony may upon occasion be resorted to with least inconvenience in every shape.

10. If by any person present a desire be expressed that a question to this or that purport be put to any other person, in relation to this same business, let the servant of God, if in his judgment such question be not irrelevant, or on any other account improper, put the same accordingly on the number of the questions. If regarding the same as improper he decline putting it to the witness, still, if by him by whom it is propounded, or by any other person present, it be desired that entry be made of such request and refusal, so be it.

11. Of the names of all persons present during the examination of such witness, let entry in like manner be made, unless the number be so great that such entry would occupy too much time: in such case the number may be limited to twelve, unless the persons themselves desire entry to be made of their names: in which case, after those by whom no such desire has been expressed, have been entered to the number of twelve, entry may be made of those by whom the desire is expressed till the whole number amount to twenty-four. If by any person complaint be made of partiality in the choice, let note be made of such complaint, the servant of God following his own judgment notwithstanding.

Section V.

Securities applicable to the case of mysterious disappearance.

Art. 1. In case of unexpected disappearance of any person, if it be known or suspected that he is clandestinely kept in confinement anywhere, or has been secretly put to death, or by force or fraud sent out of the country: application being made on his behalf to the Cadi, or to any inferior judicatory, entry shall thereof be made in the Register Book of such judicatory, and means shall be employed for the recordation and notification of the fact, to the end that in the case of his being unlawfully confined, he may be liberated or otherwise dealt with; or if unlawfully transported, he may be brought back; or if unlawfully put to death, means may be taken for the punishment of all persons concerned in the commission of the injury.

Art. 2. Such application being made, the judge shall hear and make entry thereof in an appropriate Register Book of the Judicatory, and shall do whatsoever shall be in his power towards the causing notification to be made thereof throughout the dominion of the state.

Art. 3. At the request of any person so applying, the judge shall immediately deliver to him, or suffer him to take or cause to be taken, a copy thereof signed by the said judge. Copies in any number being taken of such copy, the judge shall, without delay, cause examination thereof to be made, and as soon as they have respectively been found or made correct, shall in like manner authenticate them by his signature, to the end, that, by the applicant, transmission thereof be made to all such judicatories and mosques, as the applicant shall be desirous of sending them to: whereupon, immediately upon the receipt of each such copy, the Iman of the mosque shall make publication thereof, by reading the contents to the faithful in full congregation assembled.

Art. 4. In every judicatory, in the office of which any such copy shall have been received, the presiding judge shall cause it to be kept in the archives, having, in the first place, made notification thereof in the promptest, and at the same time, in the most public manner that the circumstances of time and place admit of.

Art. 5. Attached to such *record of disappearance*, shall be an invitation to all persons having knowledge of any facts, tending to the discovery of the authors of the injury, or the causing it to cease if the party be alive, to repair to any judicatory, or to any mosque at their choice, there to testify what they know. Which done, the president of the judicatory, or the Iman of the mosque, shall, upon his responsibility, use such means as his situation admits of, to the forwarding to the proper judicatory the information so obtained.

Art. 6. The petition on which a record of disappearance is grounded, must be signed by

Digitized by Google

some one person, namely, to the end that, in case of its being presented through malice, or otherwise without justification or sufficient excuse, the person presenting it may be responsible to the purpose of pecuniary compensation, with or without ulterior punishment for the vexation so produced. Such petition may be signed by persons in any number: and in such case, such signatures may be in lines one under another, or in lines forming the rays of a circle. The use of this radial form is, to save the individual principally concerned, from being more exposed than the rest to vindictive treatment at the hands of any functionary or other person, in whose breast the application might excite displeasure.

Art. 7. In so far as applicants are unable to defray the expense of copies and transmission, let the judicatory defray it out of any such means as it has in its power.

Section VI.

*Securities against Extortion of Personal Service.**

Art. 1. By no person, functionary or non-functionary, shall personal service in any shape be exacted of any individual, without giving him in writing a sufficient acknowledgment thereof.

Art. 2. In such acknowledgment shall be contained the particulars following, namely—

1. The name of the individual at whose hands the service was required.
2. The proper name and official name of the functionary by whom the service was required.
3. The particular nature of the service.
4. The nature of the exigency: *i. e.* of the demand or need which, on the public account, there was for the performance of such service.
5. The time, that is to say the year, month, day, and hour, at which the service was first required.
6. The time during which the service was required to be continued.
7. The willingness or unwillingness of the individual to render the service so required.
8. In case of unwillingness, the reasons, if any, alleged by him, why the service ought not at all, or ought not at that time, to be exacted of him.
9. The performance, imperfect performance, or non-performance, of the service so required.
10. Collateral damage, if any, inevitably sustained by the individual, by the performance of the service.

Art. 3. Of such act of acknowledgment let two copies be taken: one to be delivered to the individual, the other kept by the functionary.

Art. 4. On each of these let the individual signify his assent or dissent to the several statements therein contained, attesting the same by his name or his mark: his name, if he be unable to write it, being written by, or by order of, the functionary.

Art. 5. The nature of the service and the fact of the exaction of it being thus recorded, it will then be to be compensated for on account of government, or left uncompensated according to the nature of the case.

Art. 6. Let the act of acknowledgment, as to all particulars antecedent to the performance of the service, be made out and signed antecedently to such performance, or not till afterwards, according to the nature of the exigence: that is to say, according as this testimony can or cannot be given beforehand without prejudice to the service.

Examples of cases in which it may probably not be capable of being given without prejudice to the service:

1. Prevention, stoppage, or diminution, of damage by any physical calamity, such as that occasioned by fire or inundation.
2. Prevention, stoppage, or diminution, of damage to body or goods by delinquency in any shape—such as, killing, wounding, or beating, forcible depredation, destruction or damnification of goods, by internal rebellion.
3. Prevention, stoppage, or diminution, of damage, in the like shape by foreign enemies.

Art. 7. Where the nature of the service is such as to require that it be executed by individuals in an indeterminate number at the same time, no such act of acknowledgment need be given to each one of them.

Art. 8. But in this case let a general statement of the number be committed to writing by the proper functionary, and deposited either in the mosque or the judicatory within the district of which the matter happened, or both, as the case may require.

Art. 9. If so it be that this or that individual has, on the occasion of the performance of such service, received any material damage in body or goods, let note, with sufficient attestation be taken thereof, to the end that he may receive compensation in a pecuniary shape at the hands of government.

Art. 10. So if it be, that by the magnitude of hazard to body or goods, or by the success or energy of his exertions, it has happened to this or that individual to distinguish himself in an eminent degree, let note thereof be taken, and a duly attested copy thereof be delivered to him. In this case, if the degree of merit manifested be sufficient, let entry be made in an appropriate register to be kept in every mosque and in every judicatory. It may be styled *The Register of merit*, or *The Register of extraordinarily meritorious public service.*

* Extortion of personal service may be considered as depredation; viz. to the amount of the profit derived from it on the one hand, and the loss or other sufferance produced by it on the other. In so far as to the individuals labour is a source of profit, forced labour is loss to an amount equal to the profit which in the time so employed by them might have been gained.

Digitized by Google

Section VII.

Securities against Official Depredation.

Definitions.—Official depredation may have place at the expense of an individual, or at the expense of government,—that is to say, at the expense of the whole community, at whose expense the money employed in the service of government is collected. Official depredation at the expense of government belongs not to this purpose.

Official depredation has place in so far as any public functionary avails himself of the power or influence possessed by him by means of his office, to obtain from any person money, money's worth, or beneficial service in any shape, not having a right thereto by law.

The instrument whereby this offence is committed, may be either force, intimidation, or deceit.

Intimidation may be exercised by producing either the fear of some eventual positive evil, or the fear of failing to obtain the matter of good which the functionary had no right to prevent the individual from receiving.

Art. 1. Imposition of secrecy is evidence of official depredation. If on the occasion of the valuable thing or service received, intimation is by the functionary conveyed to the individual, that it is the wish of the functionary that the transaction should be concealed from anybody, such declared wish affords presumption of official depredation. The presumption, if the fact of the having given intimation of such a wish is credited, shall be regarded as provisionally conclusive.

Art. 2. If on account of any service or supposed service, rendered or supposed to have been rendered or to be about to be rendered to an individual, by a public functionary, by means or in respect of his official power, gift or service other than what is appointed and allowed by law be received by him, or to his use, or for any person specially connected with him by any tie of interest or sympathy, intimidation or corruption shall be presumed to have been exercised by such functionary: intimidation, namely by apprehension, lest evil in some shape in which it ought not to be inflicted by him on the individual, be so inflicted, or lest good in some shape in which it ought to be rendered to the individual by the functionary without such gift or service, should not be rendered by him accordingly: corruption, in the view of obtaining of the functionary, at the expense of the public, the matter of good in some shape in which it ought not to be so rendered.

Art. 3. In case of intimidation, the gift, or the equivalent of the service, may be recovered of the functionary or his heirs at any time within ( ) years.

Art. 4. In case of corruption it may be recovered for the use of the public treasury.

Art. 5. If by any public functionary, gift or service not due to the sovereign by law, be received or required of any individual, on pretence that it is for the sovereign's use or by command of the sovereign, the intimation by which it is asserted or supposed, that the sovereign issued any such command, or would receive any such gift of service if permitted, shall be deemed a calumny, and the functionary and every person willingly contributory to the conveying such intimation, shall be punished as the author of such calumny.

Art. 6. If on any such occasion, any writing to any such effect be produced, purporting to be authenticated by the signature of the sovereign, the same shall be regarded as a forged instrument, and the persons concerned in the exhibition thereof shall be punished as for forgery.

Art. 7. Provided always, that if the sovereign be pleased to appear in the judicatory, and in the face of the bystanders, declare that the signature was really his signature, in such case it shall be acknowledged as such, and all due obedience shall ensue.

Art. 8. Every functionary by whom, on account of any branch of the public service, money or money's worth is required at the hands of any individual, shall, on receiving that which is required, or any part of it, deliver to the person of whom it has been received, an appropriate instrument or writing, acknowledging such receipt. This instrument may be termed an *acknowledgment of receipt*, or in one word a *receipt*.

Art. 9. If no such instrument be delivered, the act of receipt shall be deemed an act of *official depredation*, or say in one word *extortion*.

Art. 10. Of every such receipt two copies shall be made. One of these shall be delivered to the person in whom the requisition is made as above; in it shall be written:

1. Name of the place in or at which the requisition is made—district, town, if any, and parish.
2. Time at which the requisition is made.
3. Official name of the functionary by whom the requisition is made.
4. Personal name of the functionary by whom the requisition is made.
5. Name of the individual on whom the requisition is made.
6. The subject-matter of the requisition so made.
7. The branch of the public service for which the requisition is made—for example, the financial, the judicial, or the military.
8. The time on or before which it is required that the thing in question shall be delivered.
9. The place at which it is required that the thing in question shall be delivered.
10. If the thing in question be delivered accordingly, mention of such delivery.

Art. 11. If lawful, such requisition shall be either specially or generally manifested.

By specially manifested, understand manifested by a requisition made to the particular individual.

Digitized by Google

By generally manifested, understand manifested to all such persons as are within the description thereupon given—as, for example, all the persons in a certain district, or all the persons of a certain class whose ordinary abode is within that same district.

Section VIII.

Securities in favour of Private Writings: or Securities for the Writings or other Documents of Individuals, against wanton or oppressive Seizure, Destruction, Damnification, or Inspection, by Non-functionaries or Functionaries.

Art. 1. No writing shall, against the will, known or reasonably presumable of the owner, be carried or kept out of his custody or power, or be seized, destroyed, damaged, or inspected, by or by order of any person in authority: unless it be in pursuance of the order of a Judicatory.

Art. 2. Such order may be either subsequently to the definitive sentence pronounced in a suit or cause, and for the purpose of giving effect to such sentence, or antecedently to such sentence, and for the purpose of furnishing due grounds for it in the shape of evidence.

Art. 3. In case of such oppressive seizure, destruction, damnification, or inspection, any person concerned in the infliction of the injury shall be responsible to the purpose of pecuniary compensation, with or without ulterior punishment, as the case may require.

Note, that the evil produced by such injurious inspection is capable of wearing any shape in which evil to any person or persons is capable of having place:—in his person, in his reputation, in his property, in his condition in life: in any of these ways an individual is liable to be made a sufferer from such a cause.

Art. 4. If, by any illegal means, writings be obtained contributing to the proof of any offence, the illegality of the means shall not have the effect of exempting the possessor from the punishment adapted to the offence: but in the adaptation of the punishment, any evil suffered by him in consequence of the inspection thus obtained of any other writing, shall be considered.

Art. 5. So, in the case where, as between two parties who are in a state of dispute with relation to a certain right, a writing having for its tendency the giving effect to the claim of one of the parties, and which, as such, the other ought to produce, or to have produced, has been obtained by illegal means: that is to say, without sufficiently and properly issued warrant. But if it be by wilful falsehood in any shape that the writing has been obtained, all persons concerned shall be punished for the falsehood: and the party, if privy to the falsehood, shall not have the benefit of the evidence so obtained. But care must be taken, lest, he not being privy to the falsehood, a false friend should, by obtaining it by means of falsehood, deprive him of the benefit of it.

Art. 6. If, by legal means employed for the purpose of obtaining evidence of this or that act of delinquency, or of the correspondent non-delinquency, or in respect of this or that particular right, writings or other documents capable of serving as evidence respecting any other supposed offence or right, be obtained, the evidence thus obtained may be employed accordingly. But if, in this way, possession or inspection has been obtained of writings or other documents, by the publicity of which evil in any shape has been produced to any person, without service rendered to justice in any shape, as above: for such evil, all parties concerned in the production of it shall be responsible to the purpose of reparation or punishment, or both, as the case may require.

Art. 7. If, for the purpose of producing serious evil by disclosure of writings or other documents, evidence not applicable to any other than a trivial offence or a trivial right be obtained, although it be by legal means, all persons knowingly concerned in such inspection or divulgation, shall be responsible to the purpose of reparation, or punishment, or both. But from the punishment, deduction may be made proportioned to any such real good as shall be deemed to have been produced by the production of such evidence.

Example. For the purpose of causing a person to be disinherited, or otherwise made to suffer by an over-severe or capricious father, husband, or master, an adversary obtains by legal means, in company with documents applicable to the purpose of a trivial offence or right, others which, by means of some exasperation, produce the evil effect intended, as above.

CHAPTER V.

HOPES OF SUCCESS FOR ANY PROJECT HAVING SUCH SECURITIES FOR ITS END.

Section I.

Value of the Concession on the part of the Sovereign.

In the first instance, all that to this effect can be done by the sovereign—all that can be asked for at his hands—is resolveable into one thing—promises. Towards the performance of these promises, all that can be done in the event of a violation of the promises is, the procuring notoriety for the several acts by which such violation has been effected.

Everything I say that he can do on his part amounts to a promise, and nothing more. If, for example, he grants a representative assembly, what he thereby does by such grant amounts to a promise to suffer the deputies to be elected, and to meet, according to forms of their own choosing, or forms recommended by him, as the case may be. If, in the case of such invitation or permission, he makes a de-

Digitized by Google

claration or assurance that, in the event of their meeting, he will not thenceforward give, or endeavour to give, execution and effect to any laws to which they have not given their consent, whether antecedently to their receiving his sanction or not till afterwards: here again is another promise or set of promises.

If what is obtained of him consists of edicts, interdicting the exercise of any acts by which, in certain ways therein mentioned, men are made to suffer in their persons or their property, by whomsoever such acts may have been exercised,—in this again is comprised a promise, not only to abstain from such acts himself, but to punish without exception all persons by whom they shall be or have been exercised.

As a security, and that a necessary one, for the performance of this primary class of promises, comes a sort of secondary class of promises, having for their subject-matter in the event of any violation of these promises, the suffering the giving execution and effect to a set of mandates and permissions, having for their object the giving to every such infraction notoriety to every extent possible.

If, notwithstanding these promises, explicit and implied together—promises engaging not to give any such predatory or other oppressive orders, orders to that effect are given by him, here again is another instance of violation of promise on his part. If, notwithstanding the correspondent order to the citizens of all classes not to exercise such acts of violation, acts of that sort are exercised, and he omits to give the requisite orders for appropriate prosecution and virtual punishment,—if to any exertions made by the injured parties, or others, for the purpose of instituting and continuing such prosecution until sentence be pronounced, and if condemnatory, executed, he, by himself or others, opposes obstructions in an immediate and declared, or unimmediate and undeclared, way—obstructions to any endeavours used for bringing about such punishment; —here again is another violation of promise—another instance of perfidy on his part.

Still, in all these cases, everything that is done by any person other than the sovereign himself, consists in an appeal made to public opinion: of everything that is thus done or endeavoured at, the success depends upon the spirit, the intelligence, the vigilance, the alertness, the intrepidity, the energy, of those of whose opinions the public opinon is composed.

As everything depends upon public opinion, so does everything depend upon notoriety—notoriety as above to ordinances, transgressions of these ordinances, and suffrages. And note here, with regard to transgressions, that be the instances of violation ever so frequent, it follows not from such frequence that the ordinances in question have been altogether without effect; much less that in their own nature they are inefficient and nugatory. This may be exemplified in the case of the ordinance whereby assistance given to a person engaged in the commission of this or that act of oppression is declared to be criminal, and as such punishable, resistance to it lawful and not punishable.* Antecedently to such concession, any person by whom any such act of oppression was witnessed, would regard it as lawful, and be without hope of any punishment being inflicted on any person concerned in it. Suppose, on the other hand, the concession and the virtual promise contained in it made, every one would, in the first instance, and unless taught the contrary by experience, entertain the expectation and hope of seeing it observed: and in pursuance of such hope, individuals might rise up with one accord, and concur in opposing effectual resistance: individuals into whose conception, but for such ordinance, no idea but that of obedience would have entered.

This view of things—this hope—this estimate of the usefulness of solemn monarchical promises, how flagrantly soever violated, is confirmed by all history—by the history of all nations in which they have been made.

In England, for example, take the instances of Magna Charta, and the Bill of Rights, as already referred to: Magna Charta, dating near the commencement of the thirteenth century of the Christian era, the Bill of Rights towards the close of the seventeenth. Abundant and frequent have been the violations of both these clusters of promises: yet is it to them that the English are indebted for every security against misrule—for every abstraction from misrule by which their condition is distinguished to its advantage from that of the inhabitants of the continent of Europe.

So in France. Take, for instance, the charter which the conquering despots forced the people to receive at the hands of the reigning Monarch. The security miserably inadequate —the principle upon which it is grounded, a security for, not against, misrule. The lot of the whole people declared dependent upon the arbitrary will of a single one of them. He, by his situation, rendered, in every intelligible sense of the word worst, the worst of all of them. On every occasion, he would be instrumental in sacrificing the interest of these thirty millions of his fellow-countrymen to his own sinister interest and caprice; yet such is his benevolence, that cases are mentioned by him in which he promises, so far, to keep a restraint upon his desires, as to forbear from making the sinister sacrifice. Each moment he would be warranted in taking all they have; yet such is his generosity, that, of the fruit of each man's labour, there is a part which, in so far as it may happen to the promise to be observed, he may keep. Even of this scandalous provision, insulting and grossly inadequate as it is, the violations are incessant. Still, however, under this so inadequately bridled mixed monarchy, the lot of the people is less disastrous than un-

* See chap. iv. Sect. 2, supra p. 585.

Digitized by Google

der the despotism by which the Revolution was produced.

Section II.

The probability of the Sovereign's consent abstractly considered.

The question concerning the probability of consent on the part of the sovereign was brought to view at the outset: it has never been out of remembrance. Unfortunately, having, as they have, for their object the applying limits to his power, the greater the efficacy which the several proposed arrangements would have, on the supposition of his consent, the less sanguine the hope of its being obtained cannot but be. As to this point, such as they are, they must take their chance. That hopes have place, that to the purposes here in question he may be brought to bestow upon the people a benefit so transcendant and so unexampled, is a *datum* without which the work could not have been undertaken.

In form and tenor, the object has been to render what is done as little offensive to the feelings of a man in the situation in question as the nature of the case can admit of its being: of misdeeds and misdoers, a description in the several cases is given: if so it be that it is his will and pleasure to give himself a title to that appellation, there is no help for it; but to him, personally and individually, it is not, on any occasion, applied.

If to stop the course of justice be his will and pleasure, so it must be: all that could be done is, so to order matters, that the security thus endeavoured to be afforded, cannot, in any case, be taken away without its being seen by, and known to, the people that it has been taken away, and that, by taking it away, he is stopping or perverting the course of justice.

Not only so, but matters are so ordered as that, unless, in so far as special injunction of secrecy has been communicated, whatsoever has place is, by the general means of notoriety, whatever they are that have been provided, made notorious: to wit, according to the degree of notoriety, whatever it be, which, by these same means, has been established.

But, in all internal concerns, at least, not to speak of international ones, secrecy in the acts of constituted authorities, or in the circumstances in which they have been performed, affords a presumption,—and indeed, with the exception of certain cases to a comparatively small extent, which may, without difficulty, be distinguished and declared, amounts to a confession,—of guilt, of moral and political guilt: a confession, that the promotion of some sinister interest, and not the universal interest, is the object of what is done. A confession of this sort, neither the sovereign himself, nor any subordinate of his, will willingly be seen to make.

A bit of some sort or other, and that an effectual one, the courser must have in his mouth: the object is to render it so soft and smooth that, as far as possible, it shall be imperceptible. Accordingly, whatsoever be the obstacle, on no occasion is it to the person of the sovereign that it is opposed: not to him, either by name or description, but to the person concerned in the vexatious practice, whatsoever it may be. And the practice being not only vexatious, but, with reference to determinate individuals, plainly injurious, that the sovereign should, in his own person, be an actor in the injury, can scarcely, in decency, be supposed by anybody, nor will it be expected of these arrangements that they should have any such supposition for their ground. The injurious act being brought to light, whatever disrepute attaches upon it will attach, at any rate, in the first instance, upon the instruments which he employs. On them he will see it attaching: and on them, on the supposition of its not coming home to himself, he will, without much concern or resentment, as towards anybody, so long as it is not seen by him to come home to himself, see it attach. For its not doing so, he will naturally be led to trust to the splendour that environs him, and to the delusion and awe which it inspires.

To a certain degree, what he thus relies upon will take place: but, in the meantime, of a fund of discontent in the breasts of individuals not known to him, and therefore not exposed to punishment, symptoms will be continually breaking out. By the obscurity of the source, danger, in the eyes of him on whom it impends, far from being diminished, is magnified; and thus it may be that, upon the whole, he will find his situation more comfortable by abstaining from injury, than by indulging himself in it. Compared with a set of provisions, bearing expressly upon the person of the sovereign, opposition in this mode will be analogous to that which, in machinery, is opposed by friction, compared with that which is produced by an opposing bar.

Accustomed to contemplate all objects in a general point of view, the draughtsman has had some advantages over the sovereign, who, in his situation, is not accustomed to the labour of regarding them in any other than a particular point of view. By the legislative draughtsman, the objects that belong to the occasion will be seen, all of them, in a general point of view.—The vexations which, whether in the shape of simple vexation, or in that of depredation, a man in the situation of the sovereign cannot fail, upon occasion, to conceive the desire of practising: the instruments and other favourites, whom, whether on their personal accounts respectively, or in virtue of their common relation to him, as being part and parcel of his property, he will be disposed to let into a participation of these his privileges, (in some instances beforehand, and in the way of previous license, in all instances in the way of impunity, in the event of any endeavours used to call them to account;) so, on the other hand, the resentment which, by any endeavour or

Digitized by Google

so much as a disposition on the part of the person injured to obtain remedy or so much as relief, can scarce fail to be handled in a breast so situated.

To the eyes of the sovereign himself, no such extensive views will naturally be present. When the means of securing notoriety to his proceedings are proposed to him, if so it be that there exists no particular act of depredation or vexation in any shape that he has conceived the desire to commit, he will not be forward to suppose that there will be any such in future: he will not be forward to suspect to himself a disposition, which, even in his own instance, he could not regard as altogether free from blame.

If so it be that no individual instrument or favourite to whom, in respect of any particular instance of depredation or oppression he would like to afford license or impunity, happens to be in the moment in his eye, it will not be agreeable to him to look backward to past instances of any such undue favour, or forward to future contingent ones. If so it be that there exists no particular individual against whom, by the audacity of his endeavours to obtain remedy or relief his resentment has been kindled, he will not find much satisfaction in any such supposition as that of his being angry without just and sufficient cause. Not that in his situation advisers to whose situation reflections of a general nature are more necessary, are likely to be wanting—advisers by whom representation will be made of the danger, with which improvement in any shape, and particularly in the shape here in question cannot but be pregnant: nor therefore does there seem any great ground for hope, that without more special and particularly strong impulse, a concession so unexampled and naturally so revolting to ruling pride, will be submitted to. But be it what it may, this chance is the only one: which being the case, no argument against the taking it can be derived from the smallness of it.

Such as above being the securities proposed as presenting the fairest promise in every point of view, natural consequences if conceded, and probability of success taken together—only in proportion as they apply a restrictive check to the accomplishment of the sovereign's will, only in proportion to the extent to which they operate in this direction, can they be productive of any of those salutary effects for the purpose of which they are proposed. But the idea of any effectual opposition to his own will, in whatsoever direction operating, is an idea to which, in a mind so situated, more pain is attached than can be outweighed by the consideration of any particular pleasure that he may be capable of deriving from the contemplation of any particular good effects, of which the creatures subject to his power must receive their share, before he receives his: their share being at the same time, if taken in the aggregate, much greater than his. His situation is as to this matter that of the infant with his physic—some years must have passed over his head before any such remote contingent and imperfectly conceived event as the cessation of the suffering he is enduring from the disease, can form of itself an adequate inducement to be freely and voluntarily instrumental in afflicting himself with the pain so certainly and immediately attached to the nauseous dose.

The chance of the requisite concession is not equally small in all imaginable cases. To obtain security against vexation in all its shapes, and at all times against all persons, but more particularly against all persons who have it most particularly in their power to produce it, is the object of these arrangements: more particularly against vexation at the hands of the sovereign and those in authority under him: vexation for the gratification of their respective appetites and passions.

The classes of persons at whose hands it is most to be apprehended are—1. The sovereign himself. 2. The sovereign's favourites. 3. The several functionaries under him considered as being on every such occasion employed as his and their instruments for his and their personal gratification: so these same functionaries considered as being in a condition to employ their power in the production of vexation and oppression, for their own gratification and supposed advantage.

To vexation of this latter description, so far as confined to this latter purpose, the sovereign will not naturally have any considerable aversion: what may be the sufferings of the people taken at large will on this occasion, as on every other, be to a mind so situated a matter of indifference: against any sentiment of sympathy of which they may be the objects, will be to be set that portion of sympathy which has for its object the enjoyments of a select set of men, who being in a more especial manner in his service, belong to him by a nearer and dearer tie than the members of the community at large, removed as they are from his sight and his cognizance. If there be anything by which his sympathy can be turned in favour of the people, it must be a species of fear: fear of the unpopularity that by possibility may be turned against his own sacred head, by the consideration of the connexion that has place, between himself and those creatures of his will—the oppressors, whose power of continuing the oppression, a word from him would suffice to terminate.

If then, according to his calculation, any dissatisfaction produced by the divulgation of instances of oppression, will on every occasion take them and them alone for its object: if it will not rise higher: if it will not rise so high as to reach his own person, or those of his more especial favourites: in such case no very urgent inducement may be necessary for obtaining his consent. In Tripoli, as in England, if at any time he can make the people quiet, by the sacrifice of a set of instruments in which

Digitized by Google

no special favourite is numbered, a comparatively small inducement—a comparatively slight degree of apprehension may suffice. Turning out this set, and taking in a different one, he may, through their instrumentality, go on in the same track, beginning only a new score. Turning out a set of Tories, he may go on playing the same game with a pack of Whigs.

Section III.

Inducements by which, in the situation of Sovereign of Tripoli, a man may be engaged to concur, and take the lead in the proposed change.

1. Inducements purely self-regarding—inducements applying to him in his personal capacity,—to his purely self-regarding interest.

Person, reputation, property, domestic relations, condition in life; in respect of one or more of these possessions, if in any way, in the situation in question, as in any other, will a man's welfare or condition be affected, whether it be in an advantageous way, or in a disadvantageous way.

1st, As to person. Under the existing state of things, the person of the sovereign is in a perpetual state of insecurity. To individuals in an indefinite number, inducements for attacking his life are continually presented by both branches of human appetite, the irascible and the concupiscable. Under a form of government, such as the arbitrary one still in existence, as in all former times, oppression in all its shapes cannot but be matter of continual practice. Of every injury thus sustained, the sovereign presents himself to the view of the injured party as the author. In most instances this will be an erroneous view: but in a more or less considerable number, it can scarcely fail to have more or less of truth in it. So imperfectly defined under such a form of Government are the boundaries which separate right and wrong: in particular, those by which rightful occupation is distinguished from depredation in whatsoever way committed,—whether without consent and by force as in the way of taxation, or with consent, and by a sort of fraud, as by taking up goods in the capacity of a purchaser, but without ever paying for them.

Thus much as to the provocation offered to the irascible appetite, in the case of a boundless multitude; a multitude to which, at any rate, there are no bounds but those by which the population of the country is circumscribed.

Now, as to the provocation offered to the concupiscable appetite. The sovereign not having at present any established and regularly disciplined military force for the security of his person, nothing but an uncertain number of irregularly armed retainers and irregularly and unequally paid domestics, the sovereignty presents itself at all times to the eyes of a man of ardent ambition or desperate courage, in the character of a prize which awaits the hand of every man who has the spirit to put in for it. In the situation in question, were it possible for a man to have any hold on the general affections of his subjects, this hold might be a sort of security to him, a sort of discouragement to every man of adventurous disposition, who would feel disposed to put in for the prize. But no such possibility has place. By any considerable body of men who would embark together for the purpose on the principle of equality, or by a handful of men, if tolerably well trained and placed under the command of a single adventurer, induced by regular pay, by hope of plunder, or by personal attachment, the miscellaneous unarmed and irregularly and unequally-paid body of his present defenders might at any time be overpowered, and an end—a violent end put to the sovereign's life.

2. Reputation. In this particular, the advantage which invites his acceptance is, it will be seen, altogether matchless. But before any thing of detail under this head is brought to view, there will be a convenience in carrying on the inquiry through the other heads that have been mentioned. Under this head, suffice it to observe, on the present occasion, that with a man in such a situation, anything positively good in the way of reputation can scarcely in the general case find a resting-place. Whatever there may be to which this appellation can apply will be rather of the negative than of the positive cast;—such a man has in such a situation done rather less mischief than such another man. Thus, in respect of this endowment, a man has everything to gain by the change, nothing to lose.

3. Property. Under the present form of government, if in the hands of every inferior possessor, property in all its shapes is in a state of insecurity; in the hands of the superior possessor it can scarcely be said to be in a much better state. The desires of the man, whoever he be, by whom the situation of chief ruler is filled,—the desires of this man, whoever he be, being continually out-running the means of satisfying them, the agents employed by him in the collection of his dues are continually upon the alert for occasions and means of adding to the amount. But, in such a state of things, while on the one part there is a constant endeavour to grasp at more than has been wont to be received, so, on the other part, there exists a correspondent endeavour to withdraw from the grasp of the depredator as much as possible,—not only the more and more, continually demanded, over and above what has been habitually received, but likewise as much as possible of that which has hitherto been received. The consequence is, that in the midst, or by means of this conflict, security is banished from both sides.

In the midst of this conflict, less than he has at present, he may have to any amount, more he cannot have unless his subjects have

Digitized by Google

it to give to him: and his subjects are at all times prevented from having any more to give to him; prevented by that state of insecurity which is inseparable from their condition. He is indigent, because they are indigent under the existing form of government; their indigence, it will be seen, is perpetual and incurable: therefore so is his. But on this subject there will be occasion to say more presently.

4. Domestic relations and condition in life.—To this head may be referred the uncertainties and anxieties which besiege the monarch in his character of father. The prospect of a bloody contest between his sons as being about to have place whenever his own life is at an end. In every Frank monarchy the order of succession is clearly fixed: no such apprehension as that of a civil war from any such cause has place. In the dominion of Tripoli the order of succession is not fixed, and in the existing state of the family, that which in almost every other country would be one of the severest curses, is even a blessing. Of his three or four sons, the eldest on whom men's eyes would naturally have fixed themselves in the first place, is at present generally regarded as being decidedly unapt for reigning, by the flagrant atrocity of his disposition. This generally, and at present: but when the existing sovereign has quitted the stage, who can say for certain what turn men's minds, the minds on which such things depend, may take. What an incitement may not such an occasion be, for some ambitious desperado to come forward and collect a party, for the support of the natural or rightful heir to the monarchy, whose sins he will pronounce expiated by the disgrace he has endured, and whose disposition has been molified and cured by the lessons which, from the silent hand of adversity he has received.

II. Extra regarding inducements.—Inducements applying to him in his social capacity, viz. in so far as his prosperity is dependent on that of the people.

The same division, the same heads of inquiry that served in the case of his personal interest, will serve now in the case of his social interest.

In this case, however, the survey will have little need to touch upon any of the above four points, other than that of *property:* of property which, in this case, receives the name of the matter of National Wealth. In so far as, in respect of personal condition, reputation, or condition in life, the lot of individuals at large considered as members of the same community, happens to be an object of interest and solicitude to him, it is well: but in this case it is to his sympathetic affections and not to his self-regarding affections that the interest applies.

Remains, then, as the sole remaining subject of consideration in the character of a source of inducements to the sovereign to give the consent in question, the Article of National Wealth.

So far as regards hope of increase, nothing can be more intimate than the connexion between the interest of the sovereign and that of his subjects taken in the aggregate; no object more strictly dependent upon another than is his opulence upon their opulence.

In the existing state of things, under the existing form of government, the sovereign has at all times extracted from his subjects as much as was capable of being extracted from them. In this state of things, all ulterior increase to him without increase to them being hopeless, remains as the only source of hope in regard to increase to him, such increase whatsoever it may be, as may be derived from a correspondent increase to them.

But under the existing state of things, any very considerable increase of wealth to them is impossible: all such increase is altogether dependent on a general sense of security. No considerable increase of wealth can take place but by means of a proportionate increase of capital. But no considerable increase of capital employed in giving increase to the generality of growing wealth, can take place without a proportionate and correspondent increase in the sense of security. Capital is money, or money's worth, laid out in large masses in the hope of reimbursement, with an increase at the end of a length of time, more or less considerable,—say six, eight, or ten years: or even without hope of reimbursement, on the condition that the returns each year, though perhaps not more than a twentieth, or five-and-twentieth, or thirtieth of the capital advanced shall be perpetual and transferable. Whatsoever money or money's worth a man has in store, over and above what serves him for the current consumption of the year, if he cannot obtain security for any return that might otherwise be expected from the employment of it, he will either hoard it up as a stock to serve him in case of casual demand on the score of distress by loss or otherwise; or if he employ it, he will employ it in some other country—employ it, that is to say, either in giving increase to the quantity of national wealth in some other country, or, what comes to the same thing, in an indirect way; namely, by occupying the place of an equal quantity, which may be drawn off from that destination, and thus giving increase to the quantity of national wealth in that same country as above.

But by any such sense of insecurity, not only will capital be prevented from being so employed as to increase the stock of national wealth in the country in question, but it will be prevented from coming into existence: the adequate motive, the inducement for giving existence to it being wanting. By the sight of the external instruments of enjoyment or felicity, in all their several shapes, every human being is in a state of constant temptation, solicited by these as he is to make acquisition of them, and in the way of consumption employ them according to their several qualities and destinations. All without exception are perpetually operated upon, and stand exposed to the tempta-

Digitized by Google

for communication afforded by rivers; source of profit, money in the shape of tolls.

3. Reservoirs for the preservation of a supply of water in extraordinary dry seasons: for example, by wells dug in apt places, and water raised from them by horse-power or a steam-engine.

4. Embankment of rivers in their course for the purpose of irrigation, or for giving motion to mills.

5. Erection of a prison on the Panopticon plan for deriving profit from the abour of prisoners.

6. Digging of mines: extraction of useful mineral substances of various kinds from the bowels of the earth, when, by the use of boring machines, as directed by geological observation, their residence has been discovered. To conduct it with advantage, an enterprise of this sort commonly requires large advances in the shape of capital.

But to this end all claim to the absolute ownership of mines, on the part of the sovereign, in grounds belonging to individuals, must be solemnly given up. By such surrender he might profit to an indefinite amount, and could not lose anything; for the effect of such claim is neither more nor less than that of an interdiction, prohibiting the working of any such mines. It would remain for consideration whether any profit could be derived to the sovereign from a tax upon the produce of such mines.

In conclusion, supposing the system established, the government, and, above all, the sovereign at the head of it, would be illustrious among all, and even above all the sovereigns of Europe and the other parts of the Christian world. By the supposition, the change is not only on his part altogether voluntary, but it is his own work. By the supposition, this being the truth, there will be no difficulty in making it known that it is so. All the circumstances by which it is transacted will be conveyed to England, and blazoned forth in the English newspapers: from which they will find their way into the Anglo-American United States, and, in the meantime, to the liberal French newspapers, if, with any tolerable hope of safety, they can be published there.

Coupled with this intelligence, would be that of the encouragement given to the useful arts and sciences of modern European countries, by the translations made of writers of that class into Arabic, and the lectures read in the Tripolitan Universities.

These circumstances, taken together, would constitute as it were, a *pump for capital:* a pump by the force of which, capital would be drawn into Tripoli from all countries in which it overflows.

By curiosity, and the desire to see the country in which such moral wonders had been wrought, travellers from other countries, but from England in greater numbers than from all other countries put together, would be drawn to Tripoli; and as none of them would go thither without money in their pockets, here may be seen another channel through which capital would flow into it: and with it those comforts which are habitually enjoyed in other countries, and are yet unknown in Tripoli.

END OF VOLUME VIII.

EDINBURGH:
Printed by WILLIAM TAIT, Prince's Street.

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google